

**THE UNIVERSITY OF MISSISSIPPI  
MEDICAL CENTER  
2500 NORTH STATE STREET  
JACKSON, MS 39216**

Notice is hereby given that sealed bids will be received for:

**University of Mississippi Medical Center  
GRENADA  
2015 MRI Renovations - Rebid**

In the Office of Construction, University of Mississippi Medical Center, Jackson, Mississippi, at 2:00 p.m., on Tuesday, December 13, 2016 and open immediately thereafter for:  
**BID # 3623**

All bids must be sealed and plainly marked on the outside of the envelope:

**BID # 3623  
Attn: Myra White  
Construction Department**

Contract documents may be obtained from:

**RJZ, Ltd. Architecture  
91 Sunset Drive, Suite C  
Grenada, MS 38901  
(662) 226-7115 office  
(662) 226-7193 fax**

A non-refundable payment of \$150.00 per package is required. Bid preparation will be in accordance with the instructions to bidder bound in the project manual.

The University of Mississippi Medical Center reserves the right to waive irregularities and to reject any or all bids. All bids must be addressed as follows:

**Address:**  
Office of Construction  
The University of Mississippi Medical Center  
Apartment Building B, Room AB003  
2500 North State Street  
Jackson, Mississippi 39216

Dates of Publication:  
November 10, 2016  
November 17, 2016  
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The Clarion Ledger

POLICY STATEMENT  
EQUAL OPPORTUNITY IN EDUCATION AND EMPLOYMENT

The University of Mississippi Medical Center education, research, and service programs are open to every qualified person. Equal employment opportunity is announced, provided, and insured for all persons and affirmative action is taken to guarantee that individuals are recruited, hired, trained, promoted, and in all ways treated equally without regard to race, color, religion, sex, age, handicap, veteran status, marital status or national origin. The University of Mississippi Medical Center insures compliance with all applicable federal statutes and executive orders including, but not limited to, Executive Order 11246, as amended, and Title VII of the Civil Rights Act of 1964, as amended.

The University of Mississippi Medical Center insures that equal employment opportunity will be provided for all persons over age of 40 in compliance with the Age Discrimination Act of 1967, as amended.

The University of Mississippi Medical Center insures compliance with the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38USC2012).

The University of Mississippi Medical Center insures compliance with the Rehabilitation Act of 1973, as amended.

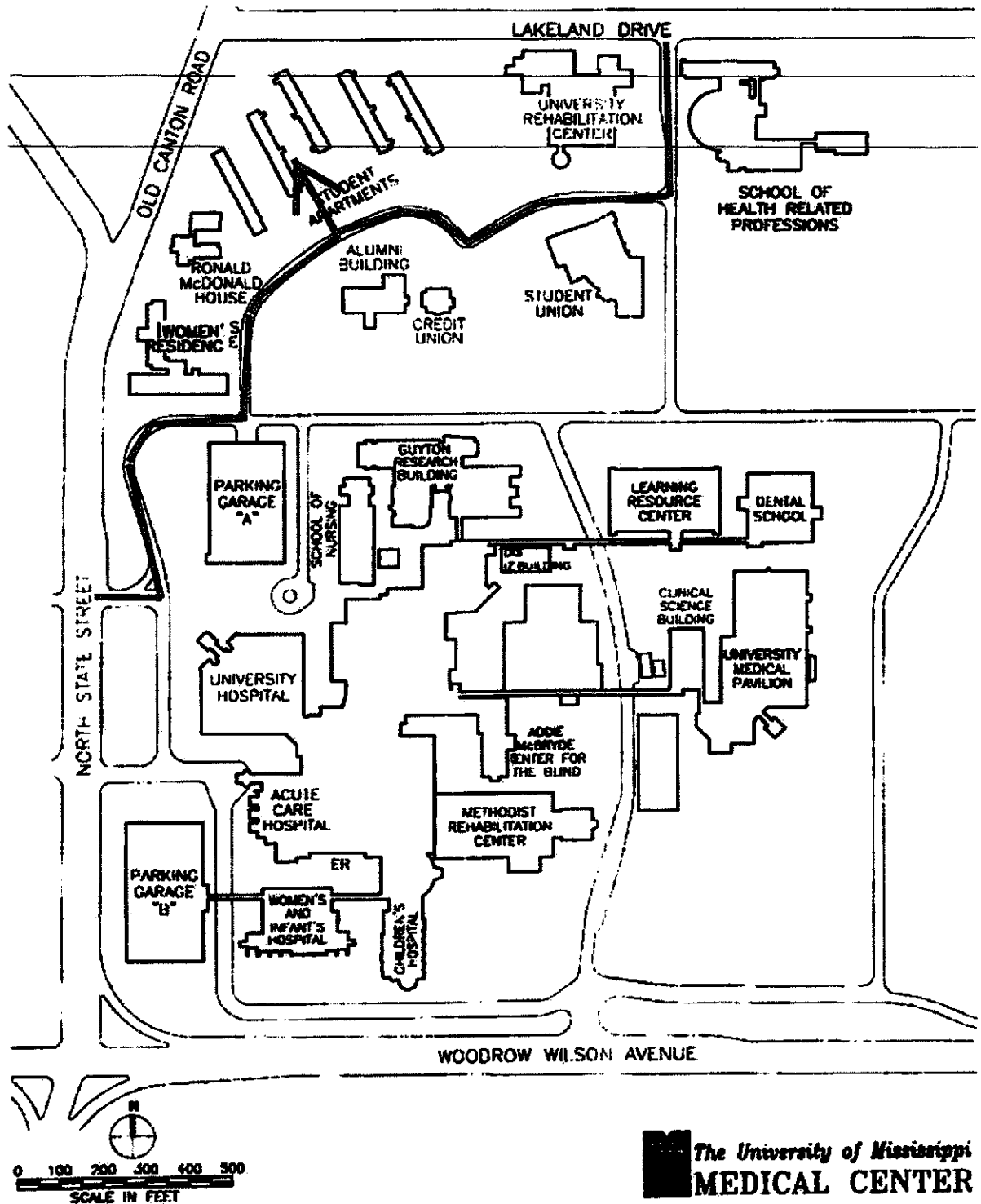
Veterans and handicapped employees, applicants are invited to identify themselves in order to benefit under the affirmative action program. The information provided will be kept confidential.

It is understood that any intentional breach of the University's Equal Employment Policy regarding nondiscrimination because of a person's race, color, religion, national origin, age, handicap, veteran or marital status, or sex shall be grounds for disciplinary action up to and including discharge.

The University of Mississippi Medical Center maintains an Affirmative Action Plan which has been distributed to supervisory personnel and is available in the Division of Human Resources to all interested persons from 8:00 a.m. to 4:30 p.m. weekdays.

I have designated the Medical Center Human Resource Director to direct the establishment of and to monitor the implementation of personnel procedures to guide our affirmative action program.

**Construction Office-Apartment Building B - Room AB003(first floor)**



## SECTION 00100

### INSTRUCTIONS TO BIDDERS

#### 1 PART 1 - GENERAL

##### 1.1 GENERAL REQUIREMENTS

- A. Interpretations: Should a bidder find discrepancies in or omissions from the plans and specifications or be in doubt as to their written meaning, he should immediately notify the Architect in writing. The Architect will then send a written instruction or interpretation to all known holders of the documents if deemed appropriate by the Architect. Neither the Owner nor the Architect will be responsible for nor bound by any oral instructions.
- B. Addenda: Any addenda to the plans and/or specifications issued before or during the time of bidding will become a part of the Contract and receipt of same must be acknowledged by Bidder in his proposal.
- C. "Or Equal" Substitutions: Refer to Section 00800, Article 3.4.2 and to Section 01600 - "Or Equal" Substitutions: Bidder is advised that some sections of the specifications may not allow for "or equal" substitutions and that the requirements of Sections 00800 and 01600 must be strictly complied with to obtain an "or equal" substitution where an "or equal" substitution is allowed. Failure to strictly comply with Sections 00800 and 01600 and any requirements in the technical specifications which do not conflict with and which are in addition to Sections 00800 and 01600 may, in the Owner's sole discretion, result in the rejection of the request for "or equal" substitution.

##### 1.2 BIDDING

- A. Contract for Construction: Lump sum, single bid received from General Contractors and shall include General, Mechanical, Electrical, and Sitework as well as all other work shown on plans and specified herein.
- B. Subcontractors and Suppliers: The Bidder is specifically advised that any person, firm, or other party to whom it is proposed to award a Subcontract or Purchase Order under this Contract must be acceptable to the Owner.
  - 1. The Owner may make such investigation as he deems necessary to determine the ability of the Bidder or subcontractors or suppliers to perform the work, and the Bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein within the time required.

##### 1.3 CERTIFICATE OF RESPONSIBILITY

- A. Each Bidder submitting a bid in excess of \$50,000.00 must show on his bid and on the face of the envelope containing the bid, his Certificate

of Responsibility Number, as required by Section 31-3-15 and 31-3-21 (latest edition) Mississippi Code of 1972. If the bid does not exceed \$50,000.00, a notation so stating must appear on the face of the envelope. When multiple contractors submit a joint venture bid in excess of \$50,000 a Joint Venture Certificate of Responsibility Number is required on the bid and face of the envelope. If the multiple Contractor Joint Venture has no Joint Venture Certificate of Responsibility number, each of the Contractors participating in the bid must indicate their individual Certificate of Responsibility numbers on the bid and on the face of the envelope.

- B. Each subcontractor whose Subcontract exceeds \$50,000.00 shall have a Certificate of Responsibility Number, as required by Section 31-3-15 and 31-3-21 (latest revision), Mississippi Code.
- C. Evidence: No bid will be opened, considered or accepted unless the above information is given as specified. Sufficient evidence that said Certificate of Responsibility has been issued and is in effect at the time of receiving bids must be submitted when required by the Owner or the Architect. Likewise, it shall be the responsibility of the Prime Contractor to require a Certificate of Responsibility Number from any subcontractor that falls in the category of "B" above.
- D. In accordance with Mississippi law, if the Bidder is a joint venture, either the joint venture or all of the Contractors which make up the joint venture must hold certificates of responsibility from the State Board of Contractors.

#### 1.4 PRE-BID CONFERENCE

- A. A pre-bid conference has been scheduled for 2:00 p.m. on Monday, December 12, 2016 in the AB008 Construction Conference Room located at the main campus of University of MS Medical Center, 2500 North State Street, Jackson, MS 39216.
- B. All general contract/major subcontract Bidders and Suppliers are urged to attend.
- C. All Bidders are expected to have familiarized themselves with conditions relating to the Work prior to the pre-bid conference.

#### 1.5 NON-RESIDENT CONTRACTOR

- A. When a non-resident Contractor submits a bid for a Mississippi public project, he shall, prior to submission of the bid, attach thereto a copy of his resident State's current law pertaining to such State's treatment of non-resident Contractors as required by Section 31-3-15 and 31-3-21, Mississippi Code, (latest revisions) or, if the State has no such law, a statement indicating the "State of (name of State) has no resident Contractor preference law". Failure to include this information or statement will result in the bid being considered non-responsive and it will be rejected.

#### 1.6 BID SECURITY

- A. Each bid, exceeding \$5,000.00, must be accompanied by the Bidder's certified check, **cashier's check** or a bid bond, duly executed by the Bidder as principal and having surety thereon, a surety company approved by the Owner and signed by an agent resident in Mississippi, in the amount of 5% of the bid. All bid bonds must be accompanied by the appropriate Power of Attorney designating the Mississippi Resident Agent.

#### 1.7 OPENING OF PROPOSALS

- A. Refer to the Advertisement for Bids.

#### 1.8 PREPARATION OF BID

- A. Conditions of Work: Each Bidder must fully inform himself of the conditions relating to the construction of the project and employment of labor thereon. Failure to do so will not relieve a successful Bidder of his obligation to furnish all material and labor necessary to carry out the provisions of his Contract. The Contractor must employ methods or means to cause no interruptions of or interference with the work of any other Contractor.
- B. Examination of Site: All Bidders, including Contractors and subcontractors, will visit the site of the Project, compare the plans and specifications to actual conditions and inform themselves of all conditions which may affect or impede construction, including but not limited to, the location of all utilities which may need to be disconnected and/or relocated to allow the orderly and timely performance of the Work. Failure to visit the site will in no way relieve the successful Bidder from his obligation to complete all Work in accordance with the Contract Documents without additional cost to the Owner.
- C. Utility Disconnection and/or Relocation: During the examination of the site, Bidders shall identify all utilities that must be disconnected and/or relocated to allow the orderly progress of the Work. Allow up to 45 days for such activity in Contractor's progress schedule required by Section 01310 or 01311, whichever applies, from the date of request to Owner via Architect for disconnection and/or relocation of such utilities to completion of such activity.

No time extension will be allowed if Contractor fails to give timely notice of the need for utility disconnection and/or relocation and Contractor is unable to timely perform the Work dependent upon such disconnection and/or relocation or if the date(s) included in the Contractor's progress schedule for disconnection and/or relocation are inadequate.

Contractor shall coordinate the disconnection and/or relocation of utilities with the Owner. The dates which Contractor includes in its progress schedule for utility disconnection and/or relocation are subject to coordination with Owner's operation requirements and Owner's acceptance of such dates, which acceptance will not be unreasonably withheld.

The utilities that may need to be disconnected or relocated may include, but are not limited to, medical gases, water (steam, heated, chilled, domestic and fire), power and communications (telephone and data).

- D. Laws and Regulations: The Bidder's attention is directed to the fact that all applicable state laws and the rules and regulations of all authorities having jurisdiction over construction of the project apply to the Contract. The successful Bidder shall be required to comply with all applicable laws, ordinances, rules and regulations at no additional cost to Owner whether such laws, ordinances, rules and/or regulations are enacted or adopted before or after last Addendum date.
- E. Obligation of Bidder: At the time of opening of bids, Bidder will be presumed to have inspected the site and to have read and be thoroughly familiar with the plans and specifications, including all addenda.
- F. Irregularities: The omission of any information requested on the Proposal Form may be considered as an informality, or irregularity, by the Owner when in their opinion the omitted information does not alter

the amounts contained in the submitted bid proposal, or place other Bidders at a disadvantage.

- G. **Protest:** Any protest must be delivered in writing to the Owner within twenty-four (24) hours after the time of the bid opening
- H. **Mistakes:** Any claim of mistake in bid must be delivered in writing to the Owner within twenty-four (24) hours after the time of the bid opening. The bidder shall provide sufficient documentation with the written request clearly proving that a mistake was made and that the bidder is entitled to the relief requested.
- I. Bidders should mark any and all pages of the proposal considered to be proprietary information which may remain confidential in accordance with Miss. Code Ann. §§ 25-61-9 and 79-23-1 (1972, as amended). Each page of the proposal that the Bidder considers trade secrets or confidential commercial or financial information should be on a different color paper than non-confidential pages and be marked in the upper right hand corner with the word "CONFIDENTIAL." Failure to clearly identify trade secrets or confidential commercial or financial information will result in that information being released subject to a public records request.
- J. UMMC is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, Miss. Code Ann. § 25- 61-1, et seq. If a public records request is made for any information provided to UMMC regarding this RFP, UMMC shall promptly notify Bidders of such request. UMMC shall not be liable to Bidders for disclosures of information required by court order or required by law. UMMC also is subject to the provision of the Mississippi Accountability and Transparency Act of 2008, Miss. Code Ann., § 27-104-151, et seq., and is required to provide public access to its financial information and expenditures through the Institutions of Higher Learning Accountability and Transparency website.

#### 1.9 PROPOSALS

- A. **Form:** Submit all proposals on forms provided and fill all applicable blank spaces without interlineation, alteration, or erasure and recapitulations of the work to be done. No oral, telegraphic, or telephonic proposals will be considered. Any addenda issued during the bidding must be noted on the Proposal Form.
- B. **Withdrawal:** Any bid may be withdrawn prior to the time for opening of bids or authorized postponement thereof. Any bid received after the time and date specified will not be considered. All bids are irrevocable offers to contract at the price bid which may not be withdrawn until 60 days after bid opening.
- C. **Submittal:** Submit one (1) original bid in an opaque sealed envelope bearing on the outside, the name and Certificate of Responsibility number of the Bidder, bidder's address, the bid file number, bid opening date, and time. Copies of the bid, if submitted, will not be considered.
- D. Any bid modification or qualification on the outside of the envelope will not be considered.
- E. **Mailing:** If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed to:

Office of Planning, Design & Construction  
University of Mississippi Medical Center  
2500 North State Street  
Jackson, Mississippi 39216-4505

- F. Bidders are urged to deliver their bid to the Owner. Owner will not be responsible for misdelivery or other delays of mail or express deliveries to the Office of Construction before the receipt dead line.

1.10 Contract

- A. Award of Contract: Award shall be made to the lowest and best Bidder, pursuant to Mississippi law and these Instructions to Bidders. The lowest bid shall be the base bid or combination of base bid and those alternates taken in order of priority to stay within available funds. The Owner reserves the right to waive irregularities and to reject any and all bids.
- B. The apparent low Bidder shall submit a listing of subcontractors and suppliers for each subcontractor and supplier whose bid or quote exceeds \$50,000.00 within three (3) days of Owner's request.

Failure to submit the Listing of Subcontractors and Suppliers within the time required shall render the Bidder nonresponsive and his bid shall be rejected.

- C. Disqualification of Bidder. The Owner reserves the right to award to other than the low Bidder when, in the Owner's judgment, it is in his best interest to do so. For instance, a Bidder may be disqualified for such reasons as:
  - 1. Bidder being in arrears on existing contracts.
  - 2. Bidder being in litigation with the Owner or another state agency.
  - 3. Bidder having defaulted on or failed to satisfactorily complete a previous contract with the Owner, including Bidder's failure to satisfactorily fulfill the warranty obligations of a previous contract with the Owner.
  - 4. Bidder's disregard for safety rules and regulations on other contracts with Owner.

The above is not an inclusive list.

- D. Security for Faithful Performance: When the bid exceeds \$5,000.00 and simultaneously with the Contractor's delivery of the executed Contract, the Contractor will furnish a payment and a performance bond in accordance with Section 31-5-51 et. seq. of the Mississippi Code (latest edition). The surety on such bonds will be by a duly authorized surety company licensed to do business in the state of Mississippi which is acceptable to the Owner.
- E. Time of Completion: By submission of its bid, Bidder agrees to commence work on or before a date specified in a written "Proceed Order" and to fully complete the Project within the time stated in the Bid Proposal Form.
- F. Substantial Completion: Substantial completion of the Project as defined by Section 00800, Article 9.8 requires the submittal by Contractor of all closeout documents required by Section 01700, all ownership and maintenance manuals required by Section 01730 and/or the technical sections of the Contract, the Guarantee of Work required by Section 00800, Article 9.8.1 and the manufacturers' certifications required by Section 01650, Part 1.4.B. Bidder's attention is specifically directed to Sections 00700, Article 9.8 and 00800, Article 9.8 for additional conditions precedent to substantial completion of the Project.
- G. Liquidated Damages for Failure to Enter Into Contract: The successful Bidder, upon his failure or refusal to execute and deliver the Contract and required bonds within ten days after he has received notice of the



acceptance of his bid, will forfeit to the Owner as liquidated damages the security deposited with his bid.

- H. Liquidated Damages for Failure to Substantially Complete Project in Time Stipulated: Applicable when stipulated sum is shown in Section 00800, Article 9.11.

1.11 BID DOCUMENTS

- A. Plans and Specifications provided by the Architect are available electronically, unless noted otherwise on the Advertisement for Bid.
- B. Deposits will be returned upon the Architect's receipt of the bid documents in good condition within ten (10) days after the opening of bids.
- C. No partial sets of documents will be issued or accepted for return.

END OF SECTION

## BID PROPOSAL FORM

Date:

Proposal From:

(Bidder)

Office of Planning, Design & Construction  
University of Mississippi  
Medical Center  
2500 North State Street  
Jackson, Mississippi 39216-4505

RE: Bid File # 3623

Gentlemen:

Having carefully examined the Contract Documents and all addenda for the referenced Project, as well as the premises and conditions affecting the work, I, the undersigned, propose to furnish all labor, materials, and services required by the Contract Documents in accordance with the conditions of said Contract Documents for the sums set forth below:

BASE BID:

(\$ \_\_\_\_\_).

ALTERNATE #1: Deduct an amount from the Base Bid for installing a T.P.O. roof in lieu of the modified roof. See Section 075400 of the specifications.

(\$ \_\_\_\_\_).

I(We) agree to hold our bid open for acceptance for sixty (60) calendar days from the date of bid opening.

If awarded this Contract, I, (We), agree to execute a Contract and start Work on a date to be set in a Notice to Proceed and to complete the entire work in \_\_\_\_\_ days, subject to the terms and conditions of the Contract.

As required by Section 00100-1.6, "Bid Security", Bid Security in the form of a \_\_\_\_\_ is attached hereto in the amount of \_\_\_\_\_ and shall become the property of the Owner in the event the Agreement and required Bonds are not executed within the time set forth herein before as liquidated damages for the delay and additional expense to the Owner caused thereby.

ADDENDUM RECEIPT: The receipt of the following Addenda to the Bidding Documents is hereby acknowledged:

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Our Corporation is chartered under the laws of the State of \_\_\_\_\_, and the names, titles and business addresses of the principal officers are as follows (non-residents Bidders see Section 00100, Paragraph 1.5):

Name \_\_\_\_\_ Title

Address

Name \_\_\_\_\_ Title

Address

Name \_\_\_\_\_ Title

Address

(TO BE FILLED IN IF A PARTNERSHIP)

Our Partnership is composed of the following individuals:

Name \_\_\_\_\_ Title

Address

Name \_\_\_\_\_ Title

Address

Name \_\_\_\_\_ Title

Address

Notice of acceptance of our bid may be mailed, telegraphed or delivered to:

SIGNED:

BY:

TITLE:

CERTIFICATE OF RESPONSIBILITY NO.  
(TO BE FILLED IN IF A CORPORATION)

DIRECTIONS FOR MAILING:

Submit bid papers in sealed envelope marked as indicated in the Instructions to Bidders, inserted in opaque sealed envelope marked as follows:

Address To:

Office of Construction  
University of Mississippi Medical Center  
2500 North State Street  
Jackson, Mississippi 39216  
Bid for  
to be opened at  
on \_\_\_\_\_

The University of Mississippi Medical Center  
AGREEMENT AND CERTIFICATION OF COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

Company Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

I. THE EQUAL OPPORTUNITY CLAUSE (If this Contract exceeds or will exceed \$10,000) During the performance of this Contract, Contractor agrees to be bound by the following provisions as contained in Section 202 of Executive Order 11246, as amended to wit:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, handicap, veteran status, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, veteran status, handicap, or age.
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contractor officer, advising the labor union or worker's representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Contractor's noncompliance with the non-discrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized by Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions or non-compliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

II. CERTIFICATION OF NONSEGREGATED FACILITIES (If this Contract exceeds or will exceed \$10,000) Contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his

employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. Contractor agrees that a breach of his certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" mean any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of such Subcontracts exceeding \$10,000 which are not exempt from the provisions of Equal Opportunity Clause, that he will retain such certifications in his files; and that he will forward notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods): NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES. A Certification of Nonsegregated Facilities as required by the May 21, 1968, order on Elimination of Segregated Facilities, by the Secretary of Labor (33 Fed. Reg. 7804, May 28, 1968, must be submitted prior to the award of a Subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each Subcontract or for all Subcontracts during a period (i.e., quarterly, semiannually, or annually). (NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)

III. EMPLOYER INFORMATION REPORT EEO.6

The undersigned Contractor further agrees and certifies that, if the value of any contract or purchase order is \$50,000 or more and the Contractor has 50 or more employees, Contractor will file a complete and accurate report on EEO.6 Form 221 (EEO.6 with the Higher Education Reporting Committee at the appropriate address per the current instructions within thirty (30) days of the date of Contract award, unless such report has been filed within the twelve (12) months period preceding the date of the Contract award and otherwise comply with the file such other compliance reports as may be required under Executive Order 11246, as amended, and Rules and Regulations adopted thereunder.

IV. WRITTEN AFFIRMATIVE ACTION PROGRAMS

The undersigned Contractor further agrees and certifies, that if the value of any contract or purchase order is \$50,000 or more and the Contractor has 50 or more employees, Contractor will develop written affirmative action compliance programs for each of its establishments as required by Title 41, Code of Federal Regulation, Section 60-1.40, Section 60-2 and Section 60-250.5.

V. VETERANS EMPLOYMENT CLAUSE (If this Contract is for \$10,000 or more)

(A) Contractor agrees to abide by and comply with the provisions of Presidential Executive Order 11701 and the provisions of 38USC2012 unless exempted as therein provided and which provisions are incorporated herein by reference to the same extent as though set forth herein in full. Contractor agrees that all employment openings of the Contractor which exist at the time of the execution of this Contract and those which occur during the performance of his Contract including those not generated by the Contract and including those occurring at an establishment of the Contractor other than the one wherein the Contract is being performed but excluding those of independently operated corporate affiliates, shall, to the maximum extent leasable, be offered for listing at an appropriate office of the State employment service system and to provide such periodic reports to such office regarding employment openings and hires as may be required: Provided, that his provision shall not apply to openings which the Contractor fills from within its organization or are filled pursuant to a customary and traditional employer-union hiring agreement and that the listing of employment openings shall involve only the normal obligations which attach to the placing of job orders.

(B) Contractor agrees further to place the above provisions in any sub-contract directly under this Contract.

VI. EXECUTIVE ORDER 11625-MINORITY BUSINESS ENTERPRISES

Pursuant to Executive Order 11625 and applicable to all contracts or purchase order is excess of \$5,000, except contracts which are personal in nature, the Contractor shall be bound by and agrees to the following provisions as set forth in Section 1-1310.2 of Title 41 of the Code of Federal Regulations:

UTILIZATION OF MINORITY BUSINESS ENTERPRISES

- (a) It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government Contracts.
- (b) The Contractor agrees to use its best efforts to carry out this policy in the award of its Subcontracts to the fullest extent consistent with the efficient performance of this Contract. As used in this Contract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in case of publicly owned business, at least 51 percent of the stock of which is owned by minority group members. For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American Eskimos, and American Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation. In all procurement contracts containing above clauses (a) and (b) which may exceed \$500,000 and which offer substantial subcontracting possibilities, the following clauses shall be included:

MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM

- (a) The Contractor agrees to establish and conduct a program which will enable minority business enterprises (as defined in the clause entitled "Utilization of Minority Business Enterprises") to be considered fairly as subcontractors and suppliers under this Contract. In this connection, the Contractor shall:
- (1) Designate a liaison officer who will administer the Contractor's minority business enterprises program.
  - (2) Provide adequate and timely consideration of the potentialities of known minority business enterprises in all "Make-or-buy" decisions.
  - (3) Assure that known minority business enterprises will have an equitable opportunity to compete for Subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority business enterprises.
  - (4) Maintain records showing (I) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority business enterprises, (ii) awards to minority business enterprises on the source list, and (iii) specific efforts to identify and award contracts to minority business enterprises.
  - (5) Include the Utilization of Minority Business Enterprises clause in Subcontracts which offer substantial minority business enterprises subcontracting opportunities.
  - (6) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's minority business enterprises procedures and practices that the Contracting Officer may from time to time conduct.
  - (7) Submit periodic reports of subcontracting to known minority business enterprises with respect to the records referred to in subparagraph (4), above, in such form and manner and at such time (not more often than quarterly) as the Contracting Officer may prescribe.
- (b) The Contractor further agrees to insert, in any Subcontract hereunder which may exceed \$500,000 provisions which shall conform substantially to the language of this clause, including this paragraph (b), and to notify the Contracting Officer of the names of such subcontractors.
- VII EXECUTIVE ORDER 11758-EMPLOYMENT OF HANDICAPPED PERSONS (If this Contract is for \$2,500 or more)
- (A) Contractor agrees that it will abide by and comply with the provisions of the Affirmative Action Clause, Section 60-741.4 of 41 CFR, regarding Affirmative Action of Handicapped Workers, which provisions are incorporated herein by reference to the same extent as though set forth herein in full.

Contractor agrees to place the above provisions in any Subcontract or purchase order of \$2,500 or more directly under this Contract unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 503 of the Rehabilitation Act of 1973.

This certification shall be valid for the period of the Contract. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

BID FILE (Contract Number)

00300-5

10-13-16

Title of Authorized Company Representative

SMALL BUSINESS CERTIFICATION STATEMENT

Please sign all applicable statements.

1. I do hereby certify that the company indicated below is a Small Business as defined by law.

NAME & TITLE

SIGNATURE

2. I do hereby certify that the company indicated below is a Disadvantaged Business concern owned and controlled by socially and economically disadvantaged individuals as defined by law.

NAME & TITLE

SIGNATURE

NAME OF COMPANY

SIGNED

If you have any questions, please contact Contracts Administration, University of Mississippi Medical Center. (601) 815-3872.



## UNIVERSITY OF MISSISSIPPI MEDICAL CENTER STANDARD TERMS AND CONDITIONS ADDENDUM

This Addendum ("Addendum") constitutes an amendment or supplement and is hereby incorporated into the \_\_\_\_\_ by and between the University of Mississippi Medical Center ("UMMC") a governmental entity and the following party:

Name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

(the above party is hereinafter referred to as "Vendor").

Notwithstanding anything contained in Vendor's terms and conditions, in any agreement by and between Vendor and UMMC, or in any quotation, voucher, or purchase order which this Addendum accompanies or to which it is attached (hereinafter collectively referred to as the "Agreement"), in the event of any conflict between the terms of the Agreement and this Addendum, the terms of this Addendum shall control. Any terms in the Agreement which purport to modify or are in conflict with the terms of this Addendum are hereby deleted, and replaced with the terms in this Addendum. By executing this Addendum, and/or by accepting UMMC's purchase order and/or by supplying the goods and services which are the subject matter of the Agreement without objection, Vendor expressly agrees to be bound by the terms of this Addendum; expressly acknowledges that the terms of this Addendum supersede the terms of any Agreement which this Addendum accompanies or to which it is attached; and expressly acknowledges that no agreement, or understanding, oral or written, which purports to modify the terms of this Addendum, whether such be contained in any of Vendor's prior or subsequent receipts, invoices, quotations, order confirmations, purchase orders, shipping forms or any other documents, shall be binding on UMMC. The terms of this Addendum may only be amended by a writing which specifically references this Addendum, and is signed by a duly authorized officer of Vendor and an authorized signatory of UMMC.

1. **Term; No Automatic Renewals.** The term of the Agreement shall be for the term stated in the Agreement itself. However, if no term is stated in the Agreement, the Agreement shall expire one (1) year from the date of the Agreement or purchase order, whichever is later. Any reference to any automatic renewals in the Agreement is hereby deleted in its entirety, and the parties expressly acknowledge that the Agreement is for one term only, and does not automatically renew itself for successive terms. All renewals must be in writing and agreed to by both parties. Notwithstanding anything contained in the Agreement to the contrary, either party may terminate the Agreement upon thirty (30) days written notice to the other. Any reference to early termination charges, fees, or penalties, is hereby deleted in its entirety, and the parties expressly acknowledge that no early termination charges, fees, or penalties will apply.
2. **Price Term.** The price term is FOB UMMC's Destination.
3. **Delivery Address.** The proper delivery address is the address stated on the purchase order.
4. **Payment.** Unless the Agreement provides for periodic invoicing, payment of all fees for services shall not occur until all services to be provided, and/or deliverables, if any, under the Agreement have been fully provided to UMMC's satisfaction. Continuance of any UMMC contract is based upon the availability of funds. Should there be no funds available for any succeeding funding period, the contract will be cancelled as of the end of the funding period with no further obligation on the part of UMMC. Any property covered by a lease shall be returned to the lessor. In the event of any reduction of available funds, this contract shall be funded as priority. No invoice shall be considered past due or late until the 45<sup>th</sup> day after receipt and no late payment fees or penalties shall apply in excess of those prescribed by law.
5. **Assignment; No Third-Party Beneficiaries.** Neither party may assign its rights under the Agreement or delegate its duties under the Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or another manner, without the prior written consent of the other party, such consent to not be unreasonably withheld. Any purported assignment of rights in violation of this Section is void. This Agreement does not and is not intended to confer any rights or remedies upon any persons other than the parties hereto.
6. **Non-Solicitation.** Each party agrees that, during the term of the Agreement and for a period of one year after termination, it will not solicit the employment of any employee or contractor of the other party without such other party's prior written consent thereto (other than through general solicitations not targeted at such persons).
7. **Insurance.** Vendor shall maintain commercial general liability insurance in a commercially reasonable amount sufficient and necessary to cover the scope of services of the Agreement. If the Agreement requires Vendor to provide professional services, Vendor shall also maintain professional liability insurance covering itself, its employees, agents, professional employees and representatives in the minimum amounts of \$1 Million per occurrence/ \$3 Million aggregate annually. In addition, if the Agreement requires Vendor to provide on-site services to UMMC, Vendor shall maintain Workers' Compensation coverage of its employees, if any, and said coverage shall be in compliance with applicable law. Upon request, Vendor shall provide proof of insurance to UMMC. UMMC is self-insured under the Mississippi Tort Claims Act. Any provisions of the Agreement which require UMMC to obtain or maintain insurance are hereby deleted in their entirety. Any provisions of the Agreement which require UMMC to name Vendor as an additional insured are hereby deleted in their entirety.
8. **Governing Law, Venue.** This contract is governed and controlled by all applicable laws, ordinances, rules and regulations of the State of Mississippi. All suits, claims, cases, controversies, actions, disputes, complaints and/or orders to show cause related to: arising from; in connection with; or to construe or enforce the terms of the Agreement (hereinafter "Suits") shall be governed by the laws of the State of Mississippi, without regard to its conflicts of law principles. Any provision contained in the Agreement which purports to set venue outside of the State of Mississippi is hereby deleted in its entirety.
9. **Returns/Cancellations.** Notwithstanding anything contained in the Agreement to the contrary, UMMC may cancel the order for any goods, equipment, products or materials prior to shipment or after shipment, without any liability to Vendor for such cancellation other than the actual direct cost incurred by Vendor in beginning to process and/or ship such Order, which is evidenced by documentation satisfactory to UMMC. In no event, however, shall such cancellation cost charged by Vendor exceed 15% of the purchase price of the cancelled goods, equipment, products or materials.
10. **Delay.** In the event of any delay in shipment of goods and/or the provision of services in excess of 30 days for which Vendor is responsible, UMMC shall have the right to cancel the Agreement or any order without any liability to Vendor whatsoever. In the event of any delay in shipment for which UMMC is responsible, the time for delivery shall be extended without additional cost or penalty to UMMC, provided that if such delay should exceed 30 days, Vendor shall provide UMMC with the option to either cancel the Agreement or order, or accept delivery to an alternate location, with risk of loss and title to such goods to pass to UMMC upon delivery to the location specified by UMMC.
11. **Attorneys Fees, Collection Costs and Damages.** Any provisions of the Agreement which require the prevailing party, and/or require UMMC to pay Vendor any attorney fees and/or collection costs are hereby deleted in their entirety. Any provisions of the Agreement which require

payment of liquidated damages by UMMC are hereby deleted in their entirety.

12. **Waiver of Subrogation.** Any provisions of the Agreement which require UMMC to waive any cause of action it may have against Vendor or any other party on account of any loss/damage insured by an insurance policy are hereby deleted in their entirety.
13. **Use of Trademarks:** Vendor shall not use any UMMC trademark, service mark, logo, symbol, design, device, name or other mark without the express written consent of UMMC which has been executed by a duly authorized UMMC officer and which specifically details the permitted uses of such by Vendor.
14. **Publicity.** Vendor may not publicize the fact of the Agreement; UMMC's relationship with Vendor as its customer; include UMMC on any Customer lists, or use UMMC as a referral source without UMMC's prior written consent. Vendor shall submit, for UMMC's review and approval, all press releases or any other publicity materials mentioning UMMC by name, and Vendor shall not publish such without UMMC's written approval, which may be withheld at UMMC's sole discretion.
15. **Expenses.** If the Agreement provides for UMMC to reimburse Vendor for expenses, in no event shall the sum of all such expenses exceed 20% of the entire amount paid to Vendor under the Agreement. All expenses in excess of \$500 must be pre-approved in writing by UMMC, and reimbursement requests must be accompanied by receipts or documentation satisfactory to UMMC evidencing such expense. If any expenses in excess of \$500 are not pre-approved by UMMC, or if any of the documentation of any such expenses is not satisfactory to UMMC, UMMC shall not be responsible to reimburse Vendor for the same. Notwithstanding anything to the contrary, Vendor must abide by the University of Mississippi Medical Center's current Travel and Expense Policy, a copy of which shall be provided upon request.
16. **Audit Requests.** Vendor must give reasonable prior notice to the Office of Integrity and Compliance in order to obtain approval from the Chief Compliance Officer to review compliance records at Vendor's expense. Such authorization shall not be unreasonably withheld.
17. **Indemnification.** If Vendor's employees shall be performing any services whatsoever on or at any UMMC site, Vendor shall indemnify and hold UMMC harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees, resulting from or arising out of Vendor's breach of the Agreement and/or the negligence or willful misconduct of Vendor or its employees or agents.
18. **Education About False Claims Recovery Act.** Vendor acknowledges receipt of the attached document "Education About False Claims Recovery Act"; agrees to abide by same in its business with UMMC; and to provide same to its employees performing services under the Agreement.
19. **Discounts; Rebates.** If Vendor is providing UMMC any discounts or rebates which are required to be reported to Medicaid, Medicare or any other federal or state health care program, all discounts and/or rebates must be earned based on purchases of that same good or service bought within a single UMMC fiscal year July 1 to June 30. Vendor shall fully and accurately report such discount on all invoices, coupons or statements submitted to UMMC. Where the value of the discount is unknown at the time of sale, Vendor will fully and accurately report the existence of a discount program on all invoices, coupons or statements submitted to UMMC. When the value of the discount becomes known, Vendor will provide UMMC with documentation of the calculation of the discount identifying the specific goods or services purchased to which the discount will be applied. Vendor will refrain from doing anything which would impede UMMC from meeting its discount reporting obligations, and will indemnify and hold UMMC harmless from any claim asserted against UMMC by Medicaid, Medicare or any other federal or state health care program, or any state or the federal government related to, connected to, or arising from Vendor's failure to abide by the terms of this paragraph. If a party carries out any of the duties of this Agreement through a subcontract, with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract will contain a clause to the effect that, until the expiration of four (4) years after the furnishing of such

services pursuant to such subcontract, the related organization will make available, upon written request of the Secretary of HHS, or upon request of the Comptroller General of the United States, or any of their duly authorized representatives, the subcontract, and books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.

20. **Representations of Vendor.** Vendor represents and warrants that Vendor, its officers, directors and employees (a) are not currently excluded, debarred, or otherwise ineligible to participate in any federal health care programs or any state healthcare programs; (b) have not been convicted of a criminal offense related to the provision of healthcare items or services and have not been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs or any state healthcare programs; (c) are not, nor have ever been included on the Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons list; (d) are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in Vendor being excluded from participation in the Federal Healthcare Programs or any state healthcare programs and (e) if Vendor is to receive any patients' personal health information, Vendor represents and warrants that it has implemented safeguards to ensure that the privacy and confidentiality of patients' personal health information is protected. These shall be ongoing representations and warranties during the term of this Agreement and Vendor shall immediately notify UMMC of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give UMMC the right to terminate this Agreement immediately for cause.
21. **Compliance with Applicable Healthcare Laws.** The parties believe this Agreement avoids any element of inappropriate reimbursement for services as currently provided under federal or state law. Nothing in this Agreement shall be construed as a promise or obligation on the part of either party to refer patients or business to the other party.
22. **Change in Law.** (i) Notwithstanding any other provisions of this Agreement, if during the term hereof any Change of Law (defined below) results in an Adverse Consequence (defined below), the parties agree to make reasonable revisions to this Agreement to avoid such Adverse Consequences while seeking to maintain the parties as close as possible to their original positions despite such revisions. Upon notice by one party to another of such Change of Law, the parties agree that they shall attempt to resolve the matter within thirty (30) days of such notice. If the parties cannot agree upon renegotiated terms hereunder within such 30-day period, then this Agreement will terminate immediately upon written notice by one party to the other of an inability to agree. (ii) As used herein, "Change of Law" shall mean: (A) any new legislation enacted by the federal government or the government of Mississippi; (B) any new third party payor or governmental agency law, rule, regulation or guideline; or (C) any judicial order or decree. (iii) As used herein, "Adverse Consequence" shall mean a Change of Law that prohibits, restricts, limits or otherwise affects either party's rights or obligations hereunder in a material manner or otherwise makes it desirable to restructure the relationship established hereunder because of material legal consequences, including loss of tax exempt status, expected to result from such Change of Law.
23. **HIPAA.** Vendor agrees to fully comply with the Health Insurance Portability and Accountability Act of 1996 and its associated regulations and, more specifically, in 45 C.F.R. §§ 160 and 164, *Standards for Privacy of Individually Identifiable Health Information, Final Rule* (the "Final Privacy Rule"), and in 45 C.F.R. §§ 160, 162 and 164, *Health Insurance Reform: Security Standards, Final Rule* (the "Final Security Rule") collectively referred to as ("HIPAA") (as amended), as they may be applicable to Vendor. Vendor agrees to execute, upon UMMC's request, a Business Associate Agreement ("BAA") in form satisfactory to UMMC.
24. **Patient Confidentiality.** In the event Vendor is provided with access to patient medical records, Vendor agrees that all patient medical records shall be maintained in accordance with UMMC's policies and procedures and shall be treated as confidential so as to comply with all state and federal laws and regulations regarding the confidentiality of medical records, including, but not limited to HIPAA. All medical records and materials relating to patients shall be and remain the property of

UMMC during the term of the Agreement and upon the termination of the Agreement.

25. **Confidentiality.** All Confidential Information is and will be the exclusive property of UMMC or its affiliates, as the case may be. Vendor agrees not to use Confidential Information for any purposes other than the performance of the Services under the Agreement. Vendor agrees not to disclose Confidential Information to third parties except as necessary for the performance of the Agreement provided that Vendor will have executed or shall execute appropriate written agreements with such third parties sufficient to enable Vendor to comply with all the provisions of the Agreement. Vendor agrees to use the same level of care in safeguarding Confidential Information that is used with Vendor's own confidential information of a similar nature, but in no event less than reasonable care. Upon the termination of the Agreement for any reason, or at any time upon request by UMMC, all originals, copies and reprints of Confidential Information in Vendor's possession, custody, or control shall be promptly surrendered and/or delivered to UMMC or, at UMMC's option, destroyed, and Vendor shall thereafter make no further use, either directly or indirectly, of any such Confidential Information. The confidentiality provisions of the Agreement shall remain in full force and effect following termination of the Agreement. As used herein, Confidential Information means any non-public information of a party or its Affiliate (hereinafter defined), including, without limitation, the terms of any negotiations or agreements between the parties in connection with the aforementioned business opportunity, trade secrets, technical information, business information, sales information, marketing information, customer-buying patterns, algorithms, customer and potential customer lists and identities, product sales plans, inventions, developments, discoveries, software, know-how, methods, techniques, formulae, data, processes and other trade secrets and proprietary ideas, whether or not protectable under patent, trademark, copyright or other areas of the law, and any other information marked or disclosed as being Confidential Information, which is shared between the parties in writing or orally. For purposes of this Agreement, "Affiliate" shall mean any person, corporation, firm, partnership or other entity, whether de jure or de facto, which directly or indirectly owns, controls, is owned by or is under common ownership or control with a party to this Agreement, to the extent that such ownership or control constitutes at least fifty percent (50%) of the equity having the power to vote on or direct the affairs of the entity. Notwithstanding this foregoing paragraph, however, in the event the parties have executed a Confidentiality and Nondisclosure Agreement ("NDA"), the terms of such NDA shall entirely supersede this paragraph. Notwithstanding anything to the contrary in this Agreement or otherwise, the parties acknowledge that Mississippi state law as to public records and transparency governs this Agreement.
26. **No Joint Venture.** It is the intention of the parties that in carrying out its obligations under the Agreement, that Vendor and its employees shall at all times be acting as and deemed to be independent contractors. Nothing contained in the Agreement shall be construed to create a partnership, joint venture, agency or employment relationship between Vendor and UMMC. UMMC shall have no responsibility for any of Vendor's debts, liabilities or other obligations or for the intentional, reckless, negligent or unlawful acts or omissions of Vendor or Vendor's employees or agents. In addition, Vendor may not bind UMMC in any way whatsoever with respect to third parties.
27. **Independent Contractor.** It is understood by the parties that Vendor is an independent contractor and not an employee or agent of UMMC. Vendor retains sole and absolute discretion, control and judgment in the manner and means of carrying out its assignments. If the Agreement requires Vendor to provide on-site services to UMMC, Vendor shall comply with UMMC's Human Resource Department's applicable policies and procedures including pre-employment screening for any persons performing services on-site at UMMC. Vendor understands and agrees that neither it nor its employees performing services hereunder shall be entitled to any of the rights, fringe benefits and privileges established for UMMC's employees, if any, including, but not limited to, the following: retirement benefits, medical insurance coverage, life insurance coverage, health insurance, disability insurance coverage, severance pay benefits, PTO, overtime pay, etc. Vendor understands and agrees that UMMC will not pay or withhold from the compensation paid to Vendor pursuant to the Agreement any sums customarily paid or withheld for or on behalf of employees for income tax, unemployment insurance, social security, or payment pursuant to any law or governmental requirement, and all such payments as may be required by law are the sole responsibility of Vendor. Vendor agrees to indemnify and hold UMMC harmless from and against any such payments or liabilities for which Vendor may become liable with respect to such matters.
28. **Tax-Exempt Status.** Pursuant to Mississippi law, UMMC is exempt from state sales and use taxes. UMMC will not pay excise, personal property, income, value added, or other similar taxes. If the Vendor is liable for such taxes, Vendor shall take such into consideration in pricing. It is Vendor's responsibility to contact local taxing authorities in the state and county where equipment will be located to determine possible tax liabilities in connection therewith.
29. **Equal Opportunity Employer.** During the performance of any contract with UMMC, Vendor agrees to be bound by provisions of Civil Rights Act of 1964 (as amended), the Rehabilitation Act of 1973 (as amended), and the Veterans Readjustment Act of 1972 (as amended).
30. **Employment Protection Act.** Vendor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code of 1972 (as amended) and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Vendor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. Vendor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Vendor understands and agrees that any breach of these warranties may subject Vendor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Vendor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.
31. **Force Majeure.** "Force Majeure Event" means any act or event, whether foreseen or unforeseen, that meets all three of the following tests: (a) The act or event prevents a party in whole or in part from performing its obligations under this Addendum; or satisfying any conditions to the performing party's obligations under this Addendum; (b) The act or event is beyond the reasonable control of and not the fault of the non-performing party; and (c) The non-performing party has been unable to avoid or overcome the act or event by the exercise of due diligence. Notwithstanding anything to the contrary in this Addendum or otherwise, a Force Majeure Event excludes economic hardship, changes in market conditions, or insufficiency of funds. If a Force Majeure Event occurs, the non-performing party is excused from whatever performance is prevented by the Force Majeure Event to the extent prevented and satisfying whatever conditions precedent that cannot be satisfied. When the non-performing party is able to resume performance of its obligations under this Addendum or satisfy the conditions precedent to the performing party's obligations, it shall immediately give the performing party written notice to that effect and shall resume performance under this Addendum no later than five (5) working days after the notice is delivered. This provision is the exclusive remedy available to the non-performing party with respect to a Force Majeure Event.
32. **Notice.** Copies of all notices to UMMC shall also be sent to: University of Mississippi Medical Center, Office of the General Counsel, 2500 North State Street, Jackson, MS, 39216, via certified and regular mail, return receipt requested, or overnight courier.
33. **Waiver.** No failure on the part of any party hereto to exercise, and no delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right,

power or remedy hereunder preclude any further or other exercise thereof or the exercise of any other right, power or remedy.

34. **Counterparts.** The Agreement may be executed in counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument.
35. **Governmental Entity.** Vendor recognizes and acknowledges that UMMC, as a political subdivision of the State of Mississippi, is entering this Agreement, including the provisions thereof, only to the extent authorized by Mississippi law, including the opinions of the Mississippi Attorney General. Any provision of the Agreement that is in any respect not authorized by or is inconsistent with Mississippi law, including the opinions of the Mississippi Attorney General, is invalid.
36. **Severability.** If any provision of the Agreement shall be deemed to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
37. **Entire Agreement.** This Addendum; any other documents or writings which it accompanies, or to which it is attached (as amended by this Addendum); and any other documents which may be incorporated therein by reference, constitute the entire agreement of the parties with respect to the subject matter herein. Any other agreements or understandings, whether written or oral, are hereby superseded, with the exception of an NDA or BAA, if any. The terms of this Addendum; any other documents or writings which it accompanies or to which it is attached (as amended by this Addendum), shall solely govern the rights and obligations of the parties with respect to the subject matter herein. Any modification to the agreement shall only be effective if it is in writing and signed by a duly authorized representative of Vendor, and an authorized signatory of UMMC.

**SPECIAL TERMS APPLICABLE TO SOFTWARE:**

38. **Software License.** Notwithstanding anything contained in the Agreement to the contrary, Vendor grants to UMMC a perpetual, royalty-free, irrevocable license to use for UMMC's internal business only any software which may be installed in the equipment and/or other software provided by Vendor and any associated documentation provided by Vendor to UMMC. UMMC may permit its employees, agents and independent contractors to use the software and any associated Documentation (as defined below), software and (iii) it will use reasonable commercial efforts consistent with industry standards to scan for and remove any software viruses before installation of the equipment purchased hereunder. Vendor warrants that it has the right to license or sublicense the Software to UMMC for the purposes and subject to the terms and conditions set forth herein. As used in this warranty statement, (i) "Disabling Code" means computer code that is designed to delete, interfere with, or disable the normal operation of the purchased product; provided, however, that code included in the licensed software that prevents use outside of the license scope purchased for the software will not be deemed to be Disabling Code and (ii) "Documentation" means the Vendor user manuals, on-line help functions, technical specifications and user instructions regarding the operation, installation and use of the software as made available by Vendor to UMMC

39. **Software Warranty.** Notwithstanding anything contained in the Agreement to the contrary, Vendor warrants that (i) the licensed software will perform substantially in accordance with the applicable Documentation (as defined herein) or as represented by Vendor, (ii) it has not inserted any Disabling Code (as defined herein) into the licensed.

40. **Infringement.** (A) Vendor represents that it has full right to sell or license to UMMC the software, the products or the use thereof, and that all such software or products are delivered free of any liens, encumbrances or rightful claim for any infringement of any United States copyright, patent, trade secret or trademark. Vendor further warrants that the licensed software or product will not infringe any patent, copyright, trade secret or trademark. Vendor agrees to indemnify and hold UMMC harmless from any and all third party claims of infringement relating to UMMC's use of the products sold hereunder, including but not limited to paying all defense costs and attorney's fees, and any judgments. (B) If the use of any element of the licensed software is enjoined as a result of any claim arising out of a breach of this warranty, Vendor will, at its option and expense, either secure for UMMC the right to continue to use the allegedly infringing product, or to replace or modify the product so that it is no longer infringing, provided the product continues to materially perform the same function(s) as originally desired by UMMC and otherwise conforms to the warranty hereunder. In the event Vendor fails to do either of the foregoing, Vendor shall refund to UMMC the full purchase price of all products purchased hereunder.

41. **Data Extraction.** Within ninety (90) days of the termination of the Agreement, Vendor agrees to allow UMMC to migrate any stored UMMC data from Vendor's software. Upon expiration or earlier termination of the Agreement, Vendor agrees that UMMC may elect to have Vendor migrate the data to a UMMC computer at no cost to UMMC, or for Vendor to provide the data to UMMC in another form which is acceptable to UMMC at no cost to UMMC.

Accepted and agreed to on behalf of Vendor:

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and agreed to on behalf of  
University of Mississippi Medical Center:

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

## EDUCATION ABOUT FALSE CLAIMS RECOVERY ACT

I. **Policy.** It is the policy of UMMC to provide detailed information to its employees – and those of its contractors and agents – about the role of the federal False Claims Act, the federal Program Fraud Civil Remedies Act, and applicable state false claims laws in preventing fraud, waste, and abuse in federal health care programs, including the Medicaid program.

II. **Purpose.** The purpose of this policy is to comply with certain requirements set forth in the federal Deficit Reduction Act of 2005 (the “DRA”), and sections 6031 and 6032 of the DRA in particular, with regard to educating employees about federal and state false claims laws.

III. **General.** False claims laws seek to prevent fraud, waste, and abuse in government health care programs in two significant ways. First, they permit the government to bring civil lawsuits to recover damages and penalties against health care providers that submit false claims. Second, these laws often permit private persons, including current or former employees of such providers, to bring legal actions against the providers on the government’s behalf.

There are both federal and state false claims laws.

A. **Federal False Claims Laws.** The federal False Claims Act (“FCA”) makes any person or entity that knowingly submits a false or fraudulent claim for payment of United States government funds liable for significant penalties and fines. These sanctions include a penalty of up to three times the government’s damages, civil penalties ranging from \$5,500 to \$11,000 per false claim, and the costs of the civil action against the entity that submitted the false claims. This law applies generally to federally-funded programs, including health care programs such as Medicaid and Medicare.

The federal FCA also provides that a private person with knowledge of a false claim may bring a civil action on behalf of the United States government to recover funds it has paid as a result of that false claim. The government will investigate the individual’s allegations and may or may not choose to join in the lawsuit. If the government chooses to participate, it assumes responsibility for all of the expenses associated with the lawsuit. If the lawsuit is ultimately successful, the court may award the individual who initially brought the suit a percentage of the funds recovered. That percentage is lower when the government joins in the action. Regardless of whether the government participates, the court may reduce the individual’s share of the proceeds if it finds that s/he planned and initiated the false claim violation. If the individual is convicted of criminal conduct related to his or her role in the preparation or submission of the false claim, the individual will be dismissed from the civil action without receiving any portion of the proceeds.

The federal FCA also contains a provision that protects a private person from retaliation by his or her employer for participation in a false claims action. That provision applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against because of the employee’s lawful conduct in furtherance of a false claim action.

Like the federal FCA, the federal Program Fraud Civil Remedies Act (“PPCRA”) provides for administrative remedies against those who knowingly submit false claims and statements. Under the PPCRA, a false claim or statement includes submitting a claim or making a written statement that is for services that were not provided, that assert a material fact that is false, or that omits a material fact. A violation of the statute may result in a maximum civil penalty of \$5,500 per claim, plus an assessment of up to twice the amount of each false or fraudulent claim.

B. **State False Claims Law.** Mississippi has not adopted a state False Claims Act that contains a whistleblower provision and the like. Mississippi does, however, have a generally applicable Medicaid Fraud Control Act that makes it unlawful to submit a false and/or fraudulent claim. Violations of this Act are punishable by civil penalties or imprisonment, or both. See §§ 43-13-209, -211, -213, and -215 of the Mississippi Code.

IV. **Procedure.** UMMC takes compliance with the federal and state false claims laws seriously. Any employee who becomes aware of a violation or potential violation of such laws, or any fraudulent or potentially fraudulent conduct, is expected to report the same immediately.

Employees, including UMMC management, contractors, and agents, should review, understand, and follow Section IV of UMMC’s Compliance Plan, which sets forth general procedures for reporting and investigating suspected fraud. Employees may direct questions regarding the policy to their immediate supervisors or to UMMC’s Chief Compliance Officer.

UMMC encourages employees initially to report compliance concerns to their immediate supervisors, when appropriate. In the alternative, reports may be made to UMMC’s Compliance Hotline (at 601-953-1761) or to the Chief Compliance Officer. UMMC will internally address any compliance issues brought to its attention to the fullest extent possible.

Any information that employees provide to their supervisors, or any member of the administration or the Chief Compliance Officer, will be kept in confidence to the extent feasible and legal. In the event of a government investigation or lawsuit, or if the need otherwise arises for UMMC to disclose the information, such information may be disclosed at the direction of legal counsel.

UMMC will not take adverse action against an employee for reasonably requesting assistance from, or reporting potential violations of law or UMMC policy to, a supervisor, the Compliance Hotline, or the Chief Compliance Officer. By reporting his or her own misconduct, however, an employee will not insulate himself or herself from potential disciplinary action for such a violation. Employees should report concerns about possible retaliation or harassment to the Chief Compliance Officer.

UMMC will not tolerate abuse of the reporting process. Any employee who makes an intentionally false statement, or makes a report of alleged misconduct in bad faith, shall be subject to appropriate disciplinary action.

### V. Websites for Obtaining Additional Information:

Deficit Reduction Act – Public Law 109-171  
[www.gpoaccess.gov/plaws/index.html](http://www.gpoaccess.gov/plaws/index.html)  
Mississippi Code of 1972 (as amended)  
<http://www.lexisnexis.com/hottopics/mscode/>  
U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Deficit Reduction Act  
<http://www.cms.hhs.gov/DeficitReductionAct/>

### VI. References.

31 U.S.C. §§ 3729-3733  
31 U.S.C. §§ 3801-3812

SECTION 00500

AGREEMENT FORM

1 Part 1 - GENERAL

1.1 DESCRIPTION

- A. For Contracts over \$50,000.00, the Owner will use AIA Document A101, 2007 Edition, Standard Form of Agreement Between Owner and Contractor, where basis for Payment is a Stipulated Sum, as revised herein, as a part of the Contract Documents.
- B. A copy of this document is on file at the Architect's office. All Bidders shall read and understand the referenced document.
- C. When Contracts do not exceed \$50,000.00, the form of Contract will be a University of Mississippi Medical Center, Standard Purchase Order Agreement, where the basis for payment is a stipulated lump sum.

## SECTION 00650

# STANDARD CONSTRUCTION CONTRACT CERTIFICATE OF INSURANCE

This certificate of insurance neither affirmatively nor negatively amends, extends, or alters the coverage afforded by the policies below.

<b>INSURED:</b> (Contractor's Name & Address)				<b>COMPANIES PROVIDING COVERAGE w/ MID Lic or NAIC #</b>		
				<b>A</b>	#	
<b>PROJECT:</b> (Number, Name & Location)				<b>B</b>	#	
				<b>C</b>	#	
				<b>D</b>	#	
				<b>E</b>	#	
<b>OWNER:</b> University of MS Medical Center				<b>F</b>	#	
				<b>G</b>	#	
				Companies above must be approved by the MS Ins Dept at <a href="http://www.mid.ms.gov/licapp/search_main.aspx">http://www.mid.ms.gov/licapp/search_main.aspx</a> per Code & WComp at <a href="http://www.nwcc.ms.gov/">http://www.nwcc.ms.gov/</a>		
Type Insurance	Co	Policy Number	Policy Period	Coverage and Minimum Amount		
General Liability Commercial General Liability				General Aggregate \$ 1,000,000		
				Products Comp/Ops (Aggregate) \$ 1,000,000		
				Personal Injury (Per Occurrence) \$ 500,000		
				BI & PD (Per Occurrence) \$ 500,000		
				Fire Damage (Per Fire) \$ 50,000		
				Medical Expense (Per Person) \$ 5,000		
Owners/Contractors Protective Liability				General Aggregate \$ 1,000,000		
				Per Occurrence \$ 500,000		
Automobile Liability				Bodily Injury/Property Damage Combined Single Limit (Per Occurrence) \$ 500,000		
				<b>OR</b>	Bodily Injury (Per Person) \$ 250,000	
					Bodily Injury (Per Accident) \$ 500,000	
					Property Damage (Per Occurrence) \$ 100,000	
* Excess Liability (Umbrella on projects over \$500,000)				Aggregate \$ 1,000,000		
				Per Occurrence \$ 1,000,000		
Workers' Compensation (As required by Statute) Employers' Liability				Accident (Per Occurrence) \$ 100,000		
				Disease-Policy Limit \$ 500,000		
				Disease-Per Employee \$ 100,000		
Property Insurance (not required when project is demolition ONLY - required for ALL other projects including paving)				<b>OR</b>		
				Builders' Risk Installation Floater Must be equal to Value of		
Other						
Certification: I certify that these policies (subject to their terms, conditions and exclusions) have been (1) issued to the Insured for the coverages and at least the amounts as indicated by companies licensed in Mississippi; (2) countersigned by a Mississippi Licensed Agent; and (3) endorsed to require the company to give thirty (30) days written notice to the Owner prior to cancellation or non-renewal of above.						
<b>Producing Agent:</b> (Name, Address and Telephone)				(Signature) _____ (Date) _____		
				(Name and Title of Authorized Representative) (typed)		
				Agent must be approved by the MS Ins Dept <a href="http://www.mid.ms.gov/licapp/search_main.aspx">http://www.mid.ms.gov/licapp/search_main.aspx</a>		

SECTION 00700  
GENERAL CONDITIONS

1 PART 1 - GENERAL

1.1 DESCRIPTION

- A. The General Conditions for this Project are the General Conditions of the Contract for Construction, AIA Document A201-2007 dated 2007 of the American Institute of Architects, as revised at Section 00800. If the General Conditions are not bound in this volume, then they are incorporated by reference as though fully written herein.
- B. Contractors are presumed to be familiar with this document. A copy may be obtained from the Architect or examined in his office.
- C. All persons intending to provide goods or services in connection with this Work are required to read and understand the referenced document prior to proceeding.
- D. See Section 00800 - Supplementary Conditions. In the event of a conflict between the General Conditions of the Contract for Construction, AIA Document A201-2007 and Section 00800, Section 00800 shall control even if the conflicting provision in the General Conditions of the Contract for Construction, AIA Document A201-2007 is not expressly deleted or revised by reference in Section 00800.

END OF SECTION





# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

for the following PROJECT:  
(Name and location or address)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

THE OWNER:  
(Name, legal status and address)

THE ARCHITECT:  
(Name, legal status and address)

### TABLE OF ARTICLES

- |    |  |
|----|--|
| 1  | GENERAL PROVISIONS                               |
| 2  | OWNER  |
| 3  | CONTRACTOR                                       |
| 4  | ARCHITECT  |
| 5  | SUBCONTRACTORS                                   |
| 6  | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7  | CHANGES IN THE WORK                              |
| 8  | TIME   |
| 9  | PAYMENTS AND COMPLETION                          |
| 10 | PROTECTION OF PERSONS AND PROPERTY               |
| 11 | INSURANCE AND BONDS                              |
| 12 | UNCOVERING AND CORRECTION OF WORK                |
| 13 | MISCELLANEOUS PROVISIONS                         |
| 14 | TERMINATION OR SUSPENSION OF THE CONTRACT        |
| 15 | CLAIMS AND DISPUTES                              |

Init.

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## INDEX

(Topics and numbers in bold are section headings.)

### **Acceptance of Nonconforming Work**

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

### **Access to Work**

**3.16**, 6.2.1, **12.1**

Accident Prevention

**10**

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,  
10.2.8, 13.4.2, 13.7, 14.1, **15.2**

Addenda

1.1.1, 3.11.1

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

### **Additional Inspections and Testing**

9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

**Additional Time, Claims for**

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

### **Administration of the Contract**

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

### **Allowances**

3.8, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

### **Applications for Payment**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10,

11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10,  
4.2.7, 9.3.2, **13.5.1**

### **Arbitration**

8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4**

## **ARCHITECT**

**4**

Architect, Definition of

**4.1.1**

Architect, Extent of Authority

2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2,  
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,  
13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,  
4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 9.4.2,  
9.5.3, 9.6.4, 15.1.3, **15.2**

Architect's Additional Services and Expenses

2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4.1, 3.1.3, 3.10.2, 4.2.7

Architect's Authority to Reject Work

4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,  
7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,  
13.5.2, 15.2, **15.3**

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, **13.5**

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, **13.5.2**

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.7.4,  
3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2,  
4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7,  
9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, **15.2**

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, **13.5**

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

**Award of Subcontracts and Other Contracts for  
Portions of the Work**

**5.2**

### **Basic Definitions**

**1.1**

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1,  
15.3.2, **15.4.1**

**Boiler and Machinery Insurance**

**11.3.2**

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

**Bonds, Performance, and Payment**

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

**Capitalization**

**1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

**Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval  
13.5.4

Certificates of Insurance

9.10.2, 11.1.3

**Change Orders**

1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

**Change Orders, Definition of**

7.2.1

**CHANGES IN THE WORK**

2.2.1, 3.11, 4.2.8, 7, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.3.9

**Claims, Definition of**

15.1.1

**CLAIMS AND DISPUTES**

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

Claims and Timely Assertion of Claims

15.4.1

**Claims for Additional Cost**

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4

**Claims for Additional Time**

3.2.4, 3.7.4.6.1.1, 8.3.2, 10.3.2, 15.1.5

**Concealed or Unknown Conditions, Claims for**  
3.7.4

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration

15.3.1, 15.4.1

**Cleaning Up**

3.15, 6.3

Commencement of the Work, Conditions Relating to  
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4

**Commencement of the Work, Definition of**

8.1.2

**Communications Facilitating Contract Administration**

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2

**COMPLETION, PAYMENTS AND**

9

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

Compliance with Laws

1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

**Consolidation or Joinder**

15.4.4

**CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

1.1.4, 6

**Construction Change Directive, Definition of**

7.3.1

**Construction Change Directives**

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

**Contingent Assignment of Subcontracts**

5.4, 14.2.2.2

**Continuing Contract Performance**

15.1.3

**Contract, Definition of**

1.1.2

**CONTRACT, TERMINATION OR SUSPENSION OF THE**

5.4.1.1, 11.3.9, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to  
3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, Copies Furnished and Use of  
1.5.2, 2.2.5, 5.3

**Contract Documents, Definition of**

1.1.1

**Contract Sum**

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

**Contract Sum, Definition of**

9.1

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

Contract Time, Definition of

8.1.1

**CONTRACTOR**

3

**Contractor, Definition of**

3.1, 6.1.2

**Contractor's Construction Schedules**

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

## **Contractor's Liability Insurance**

### **11.1**

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

Contractor's Relationship with the Architect

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

9.7

Contractor's Right to Terminate the Contract

14.1, 15.1.6

Contractor's Submittals

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

Contractual Liability Insurance

11.1.1.8, 11.2

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.2.5, 3.11

**Copyrights**

1.5, 3.17

**Correction of Work**

2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2

**Correlation and Intent of the Contract Documents**

1.2

**Cost, Definition of**

7.3.7

**Costs**

2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

**Cutting and Patching**

3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Damages for Delay

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

**Date of Commencement of the Work, Definition of**

8.1.2

**Date of Substantial Completion, Definition of**

8.1.3

**Day, Definition of**

8.1.4

**Decisions of the Architect**

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

**Decisions to Withhold Certification**

9.4.1, 9.5, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.3.1, 2.4.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.3.1, 8.1, 9.1, 9.8.1

**Delays and Extensions of Time**

3.2, 3.7.4, 5.2.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

Disputes

6.3, 7.3.9, 15.1, 15.2

**Documents and Samples at the Site**

3.11

**Drawings, Definition of**

1.1.5

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2, 11.1.2

**Emergencies**

10.4, 14.1.1.2, 15.1.4

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials or

1.1.3, 1.1.6, 3.4, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

Extensions of Time

3.2.4, 3.7.4, 5.2.3, 7.3, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3, 15.1.5, 15.2.5

**Failure of Payment**

9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Faulty Work

(See Defective or Nonconforming Work)

## **Final Completion and Final Payment**

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5,  
12.3.1, 14.2.4, 14.4.3

## **Financial Arrangements, Owner's**

2.2.1, 13.2.2, 14.1.1.4

## **Fire and Extended Coverage Insurance**

11.3.1.1

## **GENERAL PROVISIONS**

**1**

### **Governing Law**

**13.1**

Guarantees (*See* Warranty)

### **Hazardous Materials**

10.2.4, 10.3

### **Identification of Subcontractors and Suppliers**

5.2.1

### **Indemnification**

3.17, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2,  
11.3.7

### **Information and Services Required of the Owner**

2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5,  
9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1,  
13.5.2, 14.1.1.4, 14.1.4, 15.1.3

### **Initial Decision**

**15.2**

### **Initial Decision Maker, Definition of**

**1.1.8**

### **Initial Decision Maker, Decisions**

14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

### **Initial Decision Maker, Extent of Authority**

14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4,  
15.2.5

### **Injury or Damage to Person or Property**

10.2.8, 10.4.1

### **Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
9.9.2, 9.10.1, 12.2.1, 13.5

### **Instructions to Bidders**

1.1.1

### **Instructions to the Contractor**

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2

### **Instruments of Service, Definition of**

**1.1.7**

### **Insurance**

3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11

### **Insurance, Boiler and Machinery**

**11.3.2**

### **Insurance, Contractor's Liability**

**11.1**

### **Insurance, Effective Date of**

8.2.2, 11.1.2

### **Insurance, Loss of Use**

**11.3.3**

### **Insurance, Owner's Liability**

**11.2**

### **Insurance, Property**

10.2.5, 11.3

### **Insurance, Stored Materials**

9.3.2

## **INSURANCE AND BONDS**

**11**

### **Insurance Companies, Consent to Partial Occupancy**

9.9.1,

### **Intent of the Contract Documents**

1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

### **Interest**

**13.6**

### **Interpretation**

1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

### **Interpretations, Written**

4.2.11, 4.2.12, 15.1.4

### **Judgment on Final Award**

15.4.2

### **Labor and Materials, Equipment**

1.1.3, 1.1.6, 3.4, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6,  
4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,  
10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

### **Labor Disputes**

8.3.1

### **Laws and Regulations**

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1,  
10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2,  
13.6.1, 14, 15.2.8, 15.4

### **Liens**

2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

### **Limitations, Statutes of**

12.2.5, 13.7, 15.4.1.1

### **Limitations of Liability**

2.3.1, 3.2.2, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7, 4.2.12,  
6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2,  
11.3.7, 12.2.5, 13.4.2

### **Limitations of Time**

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,  
5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,  
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5,  
11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

### **Loss of Use Insurance**

**11.3.3**

### **Material Suppliers**

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

### **Materials, Hazardous**

10.2.4, 10.3

### **Materials, Labor, Equipment and**

1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.8.2, 3.8.3, 3.12, 3.13.1,  
3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,  
9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

### **Means, Methods, Techniques, Sequences and**

### **Procedures of Construction**

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

### **Mechanic's Lien**

2.1.2, 15.2.8

### **Mediation**

8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, 15.3,  
15.4.1

## **Minor Changes in the Work**

1.1.1, 3.12.8, 4.2.8, 7.1, 7.4

## **MISCELLANEOUS PROVISIONS**

### **13**

#### **Modifications, Definition of**

##### **1.1.1**

#### **Modifications to the Contract**

1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2, 11.3.1

#### **Mutual Responsibility**

##### **6.2**

#### **Nonconforming Work, Acceptance of**

9.6.6, 9.9.3, 12.3

#### **Nonconforming Work, Rejection and Correction of**

2.3.1, 2.4.1, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

#### **Notice**

2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7, 9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

#### **Notice, Written**

2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, 13.3, 14, 15.2.8, 15.4.1

#### **Notice of Claims**

3.7.4, 10.2.8, 15.1.2, 15.4

#### **Notice of Testing and Inspections**

13.5.1, 13.5.2

#### **Observations, Contractor's**

3.2, 3.7.4

#### **Occupancy**

2.2.2, 9.6.6, 9.8, 11.3.1.5

#### **Orders, Written**

1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1

## **OWNER**

### **2**

#### **Owner, Definition of**

##### **2.1.1**

#### **Owner, Information and Services Required of the**

2.1.2, 2.2, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

#### **Owner's Authority**

1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7

#### **Owner's Financial Capability**

2.2.1, 13.2.2, 14.1.1.4

#### **Owner's Liability Insurance**

##### **11.2**

#### **Owner's Relationship with Subcontractors**

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

#### **Owner's Right to Carry Out the Work**

2.4, 14.2.2

## **Owner's Right to Clean Up**

### **6.3**

## **Owner's Right to Perform Construction and to Award Separate Contracts**

### **6.1**

## **Owner's Right to Stop the Work**

### **2.3**

## **Owner's Right to Suspend the Work**

### **14.3**

## **Owner's Right to Terminate the Contract**

### **14.2**

## **Ownership and Use of Drawings, Specifications and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, 1.5, 2.2.5, 3.2.2, 3.11.1, 3.17, 4.2.12, 5.3.1

## **Partial Occupancy or Use**

9.6.6, 9.9, 11.3.1.5

## **Patching, Cutting and**

3.14, 6.2.5

## **Patents**

3.17

## **Payment, Applications for**

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

## **Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

## **Payment, Failure of**

9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

## **Payment, Final**

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3.1, 13.7, 14.2.4, 14.4.3

## **Payment Bond, Performance Bond and**

7.3.7.4, 9.6.7, 9.10.3, 11.4

## **Payments, Progress**

9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

## **PAYMENTS AND COMPLETION**

### **9**

## **Payments to Subcontractors**

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

## **PCB**

10.3.1

## **Performance Bond and Payment Bond**

7.3.7.4, 9.6.7, 9.10.3, 11.4

## **Permits, Fees, Notices and Compliance with Laws**

2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2

## **PERSONS AND PROPERTY, PROTECTION OF**

### **10**

## **Polychlorinated Biphenyl**

10.3.1

## **Product Data, Definition of**

3.12.2

## **Product Data and Samples, Shop Drawings**

3.11, 3.12, 4.2.7

## **Progress and Completion**

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

## **Progress Payments**

9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**Project, Definition of**  
**1.1.4**  
**Project Representatives**  
**4.2.10**  
**Property Insurance**  
**10.2.5, 11.3**  
**PROTECTION OF PERSONS AND PROPERTY**  
**10**  
**Regulations and Laws**  
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,  
10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14,  
15.2.8, 15.4  
**Rejection of Work**  
4.2.6, 12.2.1  
**Releases and Waivers of Liens**  
9.10.2  
**Representations**  
3.2.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2,  
9.10.1  
**Representatives**  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1,  
5.1.2, 13.2.1  
**Responsibility for Those Performing the Work**  
3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10  
**Retainage**  
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3  
**Review of Contract Documents and Field**  
**Conditions by Contractor**  
3.2, 3.12.7, 6.1.3  
**Review of Contractor's Submittals by Owner and**  
**Architect**  
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2  
**Review of Shop Drawings, Product Data and**  
**Samples by Contractor**  
3.12  
**Rights and Remedies**  
1.1.2, 2.3, 2.4, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3,  
7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4,  
13.4, 14, 15.4  
**Royalties, Patents and Copyrights**  
**3.17**  
**Rules and Notices for Arbitration**  
15.4.1  
**Safety of Persons and Property**  
**10.2, 10.4**  
**Safety Precautions and Programs**  
3.3.1, 4.2.2, 4.2.7, 5.3.1, 10.1, 10.2, 10.4  
**Samples, Definition of**  
**3.12.3**  
**Samples, Shop Drawings, Product Data and**  
**3.11, 3.12, 4.2.7**  
**Samples at the Site, Documents and**  
**3.11**  
**Schedule of Values**  
9.2, 9.3.1  
**Schedules, Construction**  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

**Separate Contracts and Contractors**  
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2  
**Shop Drawings, Definition of**  
**3.12.1**  
**Shop Drawings, Product Data and Samples**  
3.11, 3.12, 4.2.7  
**Site, Use of**  
3.13, 6.1.1, 6.2.1  
**Site Inspections**  
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5  
**Site Visits, Architect's**  
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5  
**Special Inspections and Testing**  
4.2.6, 12.2.1, 13.5  
**Specifications, Definition of**  
**1.1.6**  
**Specifications**  
1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14  
**Statute of Limitations**  
13.7, 15.4.1.1  
**Stopping the Work**  
2.3, 9.7, 10.3, 14.1  
**Stored Materials**  
6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.4  
**Subcontractor, Definition of**  
**5.1.1**  
**SUBCONTRACTORS**  
**5**  
**Subcontractors, Work by**  
1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,  
9.6.7  
**Subcontractual Relations**  
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1  
**Submittals**  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3,  
9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3  
**Submittal Schedule**  
3.10.2, 3.12.5, 4.2.7  
**Subrogation, Waivers of**  
6.1.1, 11.3.7  
**Substantial Completion**  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3,  
12.2, 13.7  
**Substantial Completion, Definition of**  
**9.8.1**  
**Substitution of Subcontractors**  
5.2.3, 5.2.4  
**Substitution of Architect**  
4.1.3  
**Substitutions of Materials**  
3.4.2, 7.3.8  
**Sub-subcontractor, Definition of**  
**5.1.2**  
**Subsurface Conditions**  
3.7.4  
**Successors and Assigns**  
13.2

## **Superintendent**

3.9, 10.2.6

## **Supervision and Construction Procedures**

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,

7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

## **Surety**

5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of

9.10.2, 9.10.3

## **Surveys**

2.2.3

## **Suspension by the Owner for Convenience**

14.3

Suspension of the Work

5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

## **Taxes**

3.6, 3.8.2.1, 7.3.7.4

## **Termination by the Contractor**

14.1, 15.1.6

## **Termination by the Owner for Cause**

5.4.1.1, 14.2, 15.1.6

## **Termination by the Owner for Convenience**

14.4

Termination of the Architect

4.1.3

Termination of the Contractor

14.2.2

## **TERMINATION OR SUSPENSION OF THE CONTRACT**

14

## **Tests and Inspections**

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2,

9.10.1, 10.3.2, 11.4.1.1, 12.2.1, 13.5

## **TIME**

8

## **Time, Delays and Extensions of**

3.2.4, 3.7.4, 5.2.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.3.2,

10.4.1, 14.3.2, 15.1.5, 15.2.5

## **Time Limits**

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,

5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,

9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5,

13.7, 14, 15.1.2, 15.4

## **Time Limits on Claims**

3.7.4, 10.2.8, 13.7, 15.1.2

## **Title to Work**

9.3.2, 9.3.3

## **Transmission of Data in Digital Form**

1.6

## **UNCOVERING AND CORRECTION OF WORK**

12

## **Uncovering of Work**

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

## **Unit Prices**

7.3.3.2, 7.3.4

## **Use of Documents**

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

## **Use of Site**

3.13, 6.1.1, 6.2.1

## **Values, Schedule of**

9.2, 9.3.1

Waiver of Claims by the Architect

13.4.2

Waiver of Claims by the Contractor

9.10.5, 13.4.2, 15.1.6

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

Waiver of Consequential Damages

14.2.4, 15.1.6

Waiver of Liens

9.10.2, 9.10.4

## **Waivers of Subrogation**

6.1.1, 11.3.7

## **Warranty**

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7.1

Weather Delays

15.1.5.2

## **Work, Definition of**

1.1.3

## **Written Consent**

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5,

9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

## **Written Interpretations**

4.2.11, 4.2.12

## **Written Notice**

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7,

9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, 13.3, 14,

15.4.1

## **Written Orders**

1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1,

15.1.2



## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### **§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### **§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### **§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **§ 1.3 CAPITALIZATION**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### **§ 1.4 INTERPRETATION**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### **§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

### **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.2.4** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **§ 3.4 LABOR AND MATERIALS**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **§ 3.5 WARRANTY**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### **§ 3.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§ 3.7.4 CONCEALED OR UNKNOWN CONDITIONS**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 ALLOWANCES**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct,

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but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents:

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

**§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**§ 3.10.2** The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

**§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled

to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 ACCESS TO WORK**

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce



other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

**§ 4.1.1** The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 4.1.2** Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### **§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the

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Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

## § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

## § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

### **§ 6.2 MUTUAL RESPONSIBILITY**

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### **§ 6.3 OWNER'S RIGHT TO CLEAN UP**

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 GENERAL**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### **§ 7.2 CHANGE ORDERS**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### **§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

**§ 7.3.4** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**§ 7.3.5** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.6** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### **§ 7.4 MINOR CHANGES IN THE WORK**

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### **ARTICLE 8 TIME**

#### **§ 8.1 DEFINITIONS**

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### **§ 8.2 PROGRESS AND COMPLETION**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be

furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### **§ 9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the

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Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.3** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

#### **§ 9.6 PROGRESS PAYMENTS**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.



**§ 9.6.2** The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

**§ 9.6.5** Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

#### **§ 9.7 FAILURE OF PAYMENT**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### **§ 9.8 SUBSTANTIAL COMPLETION**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**§ 10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**§ 10.3.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

## **§ 10.4 EMERGENCIES**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

**§ 11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

**§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

**§ 11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

### **§ 11.2 OWNER'S LIABILITY INSURANCE**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

### **§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's

risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

**§ 11.3.1.2** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

**§ 11.3.1.3** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**§ 11.3.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ 11.3.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

### **§ 11.3.2 BOILER AND MACHINERY INSURANCE**

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

### **§ 11.3.3 LOSS OF USE INSURANCE**

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

**§ 11.3.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

**§ 11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.3.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### **§ 11.3.7 WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 UNCOVERING OF WORK**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

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**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

## **§ 12.2 CORRECTION OF WORK**

### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

## **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.



## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### **§ 13.2 SUCCESSORS AND ASSIGNS**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### **§ 13.3 WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### **§ 13.4 RIGHTS AND REMEDIES**

**§ 13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**§ 13.4.2** No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### **§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

**§ 13.5.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

**§ 13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**§ 13.5.5** If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.5.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### **§ 13.6 INTEREST**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### **§ 13.7 TIME LIMITS ON CLAIMS**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 TERMINATION BY THE CONTRACTOR**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### **§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 CLAIMS

##### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

##### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.

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Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### **§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### **§ 15.3 MEDIATION**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### **§ 15.4 ARBITRATION**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

## SECTION 00800

### SUPPLEMENTARY CONDITIONS

#### GENERAL

#### DESCRIPTION

The following Supplementary Conditions modify the "General Conditions of the Contract for Construction," AIA Document A201, 2007. Where a portion of the General Conditions is modified or deleted by the Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect. In the event of a conflict between the General Conditions of the Contract for Construction and Section 00800, Section 00800 shall control even if the conflicting provision in the General Conditions of the Contract for Construction is not expressly revised or deleted by reference in Section 00800.

The General Conditions may also be supplemented or amplified elsewhere in the Contract Documents by provisions located in, but not necessarily limited to, Division 1 of the Specifications.

#### SUPPLEMENTS

##### ARTICLE 1 - GENERAL PROVISIONS

##### 1.1 BASIC DEFINITIONS

##### 1.1.1 THE CONTRACT DOCUMENTS

Delete the last sentence in Article 1.1.1 and insert the following:

The Contract Documents shall include the Advertisement for Bids, Instructions to Bidders, Proposal Form, the plans, the specifications, including Divisions 0 through 33, all Addenda and modifications to the plans and/or specifications, the Agreement between Owner and Contractor, the performance and payment bonds, the notice to proceed and any executed change orders. Information and documentation pertaining to soil investigation data, laboratory investigations, soil borings, and related information included herein are not part of the Contract Documents. In the event of a conflict between the provisions of Division 0 and any other section of the Contract Documents, such other sections(s) shall govern.

##### 1.1.5 THE DRAWINGS

Add the following to the end of Article 1.1.5:

Large scale drawings shall govern over small scale drawings where there are differences or conflicts between such drawings. Where the word "similar" appears on the plans, it shall not be interpreted to mean "identical" and shall require the Contractor to coordinate the actual conditions and dimensions of the location where the "similar" conditions are shown to occur.

##### 1.1.8 Delete Article 1.1.8 in its entirety.

#### 1.1.9 MISCELLANEOUS DEFINITIONS

Add the following:

The term "products" as used in these Supplementary Conditions includes materials, systems and equipment.

#### 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

##### 1.2.4 Add the following Article 1.2.4:

It is the intent of the Contract Documents that the Contractor shall properly execute and complete the Work described by the Contract Documents, and unless otherwise provided in the Contract, the Contractor shall provide all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, whether temporary or permanent and whether or not incorporated in the Work, in full accordance with the Contract Documents and reasonably inferable from them as necessary to produce the intended results.

##### 1.2.5 Add the following Article 1.2.5:

The Contract Documents shall be interpreted collectively, each part complementing the others and consistent with the intent of the Contract Documents. Unless an item shown or described in the Contract Documents is specifically identified to be furnished or installed by the Owner or others or is identified as "Not In Contract" ("N.I.C."), the Contractor's obligation relative to that item shall be interpreted to include furnishing, assembling, installing, finishing, and/or connecting the item at the Contractor's expense to produce a product or system that is complete, appropriately tested, and in operable condition ready for use or subsequent construction or operation by the Owner or separate contractors. The omission of words or phrases for brevity of the Contract Documents, the inadvertent omission of words or phrases, or obvious typographical or written errors shall not defeat such interpretation as long as it is reasonably inferable from the Contract Documents as a whole.

Words or phrases used in the Contract Documents which have well-known technical or construction industry meanings are to be interpreted consistent with such recognized meanings unless otherwise indicated.

Except as noted otherwise, references to standard specifications or publications of associations, bureaus, or organizations shall mean the latest edition of the referenced standard specification or publication as of the date of the Advertisement of Bids.

In the case of inconsistency between Drawings and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

Generally, portions of the Contract Documents written in longhand take precedence over typed portions, and typed portions take precedence over printed portions.

Any doubt as to the meaning of the Contract Documents or any obscurity as to the wording of them, shall be promptly submitted in writing to the Architect for written interpretation, explanation, or clarification.



1.6 TRANSMISSION OF DATA IN DIGITAL FORM

Delete the phrase "they shall endeavor to" in the second line and insert the phrase "the Architect shall" and add the following to the end of the sentence:

, which protocols shall be the same as or similar to the Digital Data Protocol Exhibit, AIA Doc. E201-2007 and/or Building Information Modeling Protocol Exhibit, AIA Doc. E202-2008, as appropriate.

ARTICLE 2 - OWNER

2.1 The Owner is the University of Mississippi Medical Center, 2500 North State Street, Jackson, Mississippi.

The Owner's representative is Coleman Bond or as designated.

ARTICLE 2 - OWNER

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 Delete Article 2.2.1 in its entirety.

2.2.2 Delete Article 2.2.2 in its entirety.

2.2.3 Delete Article 2.2.3 in its entirety.

2.2.5 Delete Article 2.2.5 in its entirety and insert the following:

2.2.5 The Contractor will be furnished free of charge 0 copies of the plans and specifications, including all Addenda. Additional sets will be furnished at the cost of reproduction, postage and handling.

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3 Delete Article 2.3 in its entirety and insert the following:

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Article 12.2 or fails to carry out Work in accordance with the Contract Documents or fails to perform any of its obligations under the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Article 6.1.3.

The rights and remedies under this Article 2.3 are in addition to and do not in any respect limit any other rights of the Owner, including its rights under Articles 2.4 and 14.

ARTICLE 3 - CONTRACTOR

3.1 GENERAL

3.1.1 Add the following at the end of Article 3.1.1:

The relationship of Contractor to Owner shall be that of independent contractor, and nothing in the Contract Documents is intended to nor

should it be construed as creating any other relationship, expressed or implied, between Owner and Contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.5 Add the following Article 3.2.5:

Contractor, for itself and its subcontractors, acknowledges that the construction premises are restricted and that access is affected by the location of the Project, by the facilities surrounding the Project, and by other construction either being performed or proposed to be performed during performance of this Contract. Contractor, for itself and its subcontractors, acknowledges that such limitations and restrictions in space and accessibility have been taken into account in its Contract Sum and its Progress Schedule.

Utility Disconnection and/or Relocation: During the examination of the site, Bidders shall identify all utilities that must be disconnected and/or relocated to allow the orderly progress of the Work. Allow up to 45 days for such activity in Contractor's progress schedule required by Section 01310 or 01311, whichever applies, from the date of request for disconnection and/or relocation of such utilities to completion of such activity.

No time extension will be allowed if Contractor fails to give timely notice of the need for utility disconnection and/or relocation and Contractor is unable to timely perform the Work dependent upon such disconnection and/or relocation or if the date(s) included in the Contractor's progress schedule for disconnection and/or relocation are inadequate.

Contractor shall coordinate the disconnection and/or relocation of utilities with the Owner. The dates which Contractor includes in its progress schedule for utility disconnection and/or relocation are subject to coordination with Owner's operation requirements and Owner's acceptance of such dates, which acceptance will not be unreasonably withheld.

The utilities that may need to be disconnected or relocated may include, but are not limited to, medical gases, water (steam, heated, chilled, domestic and fire), power and communications (telephone and data).

3.2.6 Add the following Article 3.2.6:

The Owner is entitled to deduct from the Contractor's Applications for Payment amounts paid to the Architect for evaluating and responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where the requested information is available to the Contractor for a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

3.4 LABOR AND MATERIALS

3.4.2 Add the following to the end of Article 3.4.2:

Some Sections of the Specifications may not allow "or equal" substitution of materials, products or equipment. Where "or equal" substitution is allowed the request for "or equal" substitution will

only be considered if made in strict accordance with the requirements of Section 01600.

3.4.4 Add the following Article 3.4.4:

Contractor represents that it has independently investigated, considered and understands the labor conditions in the area surrounding the Project and acknowledges that such conditions may impact the Contractor's cost and/or time of performance of the Contract. Therefore, Contractor further represents that the Contract Price is based upon Contractor's independent investigations into such labor conditions and that the Contract time is reasonable and the date of Substantial Completion is obtainable. As a result, Contractor assumes the risk of increased costs, if any, incurred by it arising out of or related to such labor conditions and acknowledges that Contractor and its surety will reimburse Owner for any additional costs Owner incurs arising out of or related to such labor conditions.

3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

3.7.1 Delete Article 3.7.1 in its entirety and insert the following:

The Contractor shall secure and pay for the building permit and all other permits, fees, licenses, inspections and all other approvals and charges necessary for proper execution and completion of the Work.

3.7.2 Delete Article 3.7.2 in its entirety and insert the following:

At no additional cost to the Owner, the Contractor shall comply with all laws, statutes, ordinances, building codes, safety requirements, rules and regulations of whatever nature that apply to the Project, whether enacted or adopted before or after bid opening. If the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing.

3.7.3 Delete the words "knowing it to be" from Article 3.7.3.

3.9 SUPERINTENDENT

3.9.1 Add the following to the end of Article 3.9.1:

The Contractor shall also employ a competent project manager who shall be primarily responsible for the Contractor's home office activities in connection with the Contract.

3.9.2 Add the phrase "and project manager" to the end of the first sentence and to the end of subpart (1) of the second sentence.

3.9.3 Delete Article 3.9.3 in its entirety and insert the following:

After Owner's approval of the project manager and superintendent, they shall not be replaced by the Contractor without the Owner's prior written consent, which consent is required unless the Contractor submits proof satisfactory to the Owner that the superintendent and/or the project manager should be terminated by the Contractor for cause.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 Delete Article 3.10.1 in its entirety and insert the following:

The Contractor shall prepare and submit the Preliminary Schedule and the Progress Schedules as required by and within the times prescribed by Sections 01310 or 01311, whichever applies.

3.10.2 Delete Article 3.10.2 in its entirety and insert the following:

In accordance with Section 01340, Part 1.1.B, the Contractor shall prepare and submit, for the Architect's approval, a separate Schedule of Submittals which is coordinated with the Contractor's Progress Schedule.

The Schedule of Submittals shall be updated monthly and submitted to Architect with Contractor's Application for Payment. Receipt of Contractor's updated monthly submittal schedule shall be a condition precedent to Owner's obligation to pay Contractor.

3.10.3 Delete Article 3.10.3 in its entirety and insert the following:

Time being of the essence, the Contractor shall perform the Work in accordance with the most recent schedule submitted to and approved by the Owner and Architect.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.6 Add the following to the end of Article 3.12.6:

In reviewing Shop Drawings, Product Data, Samples and similar submittals the Architect shall be entitled to rely upon the Contractor's representation that such information is correct and accurate.

3.12.9 Add the following to the end of Article 3.12.9:

The Architect's review of the Contractor's submittals will be limited to examination of an initial submittal and one (1) resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

3.18 INDEMNIFICATION

3.18.1 Add the word "defend," before the word "indemnify" in the first line, add the words "or nonperformance" after the word "performance" in the third line and delete the phrase which begins "provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself)," to the end of the sentence and insert the phrase "and/or the Contractor's acts or omissions."

ARTICLE 4 - ARCHITECT

4.1.1 Add the following at the end of Article 4.1.1:

The term "Architect", "Engineer" or "Design Professional" as used in the Contract Documents refers to RJZ Architecture.

4.2 ADMINISTRATION OF THE CONTRACT

4.2.10 Delete Article 4.2.10 in its entirety.

ARTICLE 5 - SUBCONTRACTORS

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Delete Article 5.2.1 in its entirety and insert the following:

Contractor shall submit a listing of subcontractors and suppliers used by Contractor and included in the Contract Sum for each subcontractor and supplier whose bid or quote exceeds \$50,000.00 within three (3) days of Owner's request or three (3) days before the preconstruction conference if not requested earlier.

5.2.3 Delete Article 5.2.3 in its entirety and insert the following:

The Contractor shall make no substitution of any subcontractor, supplier, person or entity, listed by the Contractor as required by Sections 00100, Part 1.10.B and 00800, Article 5.2.1, without the Owner's written consent. The Contractor's unauthorized substitution of any subcontractor, supplier, person or entity shall entitle the Owner to reject the work of such subcontractor and/or the materials, product or equipment furnished by such supplier as nonconforming and require removal and replacement at no additional cost to Owner.

ARTICLE 6 - CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

Delete Articles 6.1, including 6.1.1, 6.1.2, 6.1.3, 6.1.4 in their entirety and insert the following:

The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts either in connection with other portions of the Project or other construction or operation on the site. In such event, the Contractor shall coordinate its activities with those of the Owner and of other contractors so as to facilitate the general progress of all work being performed by all parties. Cooperation will be required in the arrangement for the storage of materials, and in the detailed execution of the Work.

The Contractor, including his subcontractors, shall keep informed of the progress and the detailed work of the Owner or other contractors and shall immediately notify the Architect in writing of lack of progress or delays by other contractors which are affecting Contractor's Work. Failure of Contractor to keep informed of the progress of the work of the Owner or other contractors and/or failure of Contractor to give prompt written notice of lack of progress or delays by the Owner or other contractors shall be deemed to be acceptance by Contractor of the status of progress by other contractors for the proper coordination and completion of Contractor's Work. If, through acts or neglect on the part of the Contractor, the Owner or any other contractors or subcontractor shall suffer loss or damage or assert any claims of whatever nature against the Owner, the Contractor shall defend, indemnify and hold harmless the Owner from any such claims or alleged damages, and the Contractor shall resolve such alleged damages or claims directly with the other contractors or subcontractors.

If, through acts or neglect on the part of the Contractor, the Owner is delayed in performing other work that is identified in this Contract, then the Contractor shall be liable for the per diem liquidated damages set forth in Section 00800, Article 9.11, for each day that completion of such other work is delayed by the Contractor.

6.2 MUTUAL RESPONSIBILITY

6.2.3 Delete Article 6.2.3 in its entirety.

ARTICLE 7 - CHANGES IN THE WORK

7.1 GENERAL

7.1.3 Add the following to the end of Article 7.1.3:

Except as permitted in Article 7.3, a change in the Contract Sum or the Contract Time shall only be accomplished by written change order. Therefore, the Contractor acknowledges that it is not entitled to a change in the Contract Sum or the Contract Time in the absence of a written change order on the basis of the course of conduct or dealings between the parties and/or the Owner's express or implied acceptance of alterations or additions to the Work and/or the Owner has been unjustly enriched by the Contractor's Work or any other basis otherwise allowed by law or the facts and Contractor agrees that any such extra or changed work was performed by it as a volunteer.

7.2 CHANGE ORDERS

7.2.2 Add the following Article 7.2.2:

Contractor's execution of a Change Order constitutes a final settlement of the Contract Sum and the Contract Time for all matters relating to or arising out of the change in the Work that is the subject of the change order including, but not limited to, all direct and indirect costs associated with such change, all extended direct job site and home office overhead expenses and any and all delay and impact cost for the change, whether alone or in combination with other changes, including any impact, ripple or cumulative effect resulting therefrom, if any.

7.2.3 Add the following Article 7.2.3:

Adjustments to the Contract Sum by Change Order shall be based upon one of the methods set forth in Articles 7.3.3.1, 7.3.3.2, 7.3.3.3 or 7.3.3.4, as appropriate, with overhead and profit as allowed by Section 01036, Part 1.9.A.

7.2.4 Add the following Article 7.2.4:

All requests for Change Orders must comply with Section 01036.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.8 Delete the first sentence and insert the following:

The amount of credit to be given by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be the actual net cost plus reasonable allowance for overhead on net cost and profit thereon as approved by the Architect and Owner.

ARTICLE 8 - TIME

8.1 DEFINITIONS

8.1.3 Add the phrase "and Owner" after the word "Architect."

8.2        PROGRESS AND COMPLETION

8.2.1     Add the following to the end of the second sentence:

and that the Contractor is fully capable of properly completing the Work within the Contract Time.

8.3        DELAYS AND EXTENSIONS OF TIME

Delete Articles 8.3.1, 8.3.2, and 8.3.3 in their entirety and insert the following:

8.3.1     If the Contractor is delayed, hindered or impeded at any time in the progress of the Work for any reason or by any alleged act or neglect of the Owner or the Architect, or by any employee of either or by a separate Contractor employed by the Owner, or by changes ordered in the scope of the Work, or by other causes beyond the Contractor's control, then the Contract Time may be extended by Change Order for such reasonable time as is agreed to by the Owner. However, to the fullest extent permitted by law, and notwithstanding any other provisions in the Contract Documents, the Owner and its agents and employees shall not be liable for any damages for delay whether for direct or indirect costs, extended home office overhead, idle or inefficient labor or equipment, cost escalations, or monetary claims of any nature arising from or attributable to delay by any cause whatsoever. The Contractor's sole and exclusive right and remedy for delay by any cause whatsoever is an extension of the Contract Time but no increase in the Contract Sum.

8.3.2     No delay, interference, hindrance or disruption, from whatever source or cause, in the progress of the Contractor's Work shall be a basis for an extension of time unless the delay, interference, hindrance or disruption is (1) without the fault and not the responsibility of the Contractor, its subcontractors and suppliers and (2) directly affects the overall completion of the Work as reflected on the critical path of the Contractor's updated and accepted progress schedules. The Contractor expressly agrees that the Owner shall have the benefit of any float in the schedule and delay to construction activities which do not affect the overall completion of the Work does not entitle the Contractor to any extension in the Contract Time.

8.3.3     Any claims by the Contractor for an increase in Contract Time must follow the procedures as set forth in Section 00800, Article 15.1.5, including, but not limited to the requirement that the Contractor give prompt written notice of any claim for an extension of Contract Time within twenty-one (21) days after occurrence of the event giving rise to such claim.

8.3.4     If the Contractor submits a schedule indicating or otherwise expressing an intent to complete the Work earlier than the Contract Time provided for in the Contract, then the Owner owns the float in the Contractor's schedule, consisting of the difference between the Contractor's scheduled completion date and the Contract Time and, as a result, the Owner shall have no liability to the Contractor for any delay to the Contractor prior to the expiration of the Contract Time, even if due to the fault of the Owner.

8.3.5: Weather Delays: The Contractor agrees that normal weather occurrences and disruption to construction activities are included in the schedule. Weather occurrences or delays beyond normal are defined as days beyond the NOAA average for each month as published by NOAA.

Impacted days may be determined by the occurrence of weather events (rain) that occurred in excess of the average as indicated by NOAA.

The Contractor is responsible for providing the NOAA data, NOAA average, and the observed deviation in excess of the average as defined by NOAA for the Jackson, MS area. The weather data is to be received monthly with the Application for Payment.

All requests for time extensions shall be made monthly in writing with the Application for Payment. No monetary change in the contract value is considered due to impacted days. The Owner reserves the right to review any requests for consideration of value for extenuating circumstances by the Contractor in regard to schedule and value. The Owner is not obligated under this review for additional compensation as per Article 15.1.5.2. The Contractor may be granted a time extension due to weather only when 1) actual weather days exceed the number of days listed under NOAA averages, 2) the available Total Float is zero or less, and 3) the Weather Day causes an actual delay to the Substantial Completion date of the project by impacting one or more planned activities on the longest path of the approved schedule.

#### ARTICLE 9 - PAYMENTS AND COMPLETION

- 9.2 Delete the phrase "before the first Application for Payment" and replace with "at the preconstruction conference" per Section 01025, Part 1.4.A.

#### 9.3 APPLICATION FOR PAYMENTS

- 9.3.1 Add the following to the end of Article 9.3.1:

The form of Application for Payment will be the current edition of the AIA Document G702, Application and Certification for Payment, supported with AIA Document G703, Continuation Sheet.

- 9.3.1.3 Add the following Article 9.3.1.3:

In any contract awarded by the State of Mississippi or any agency, unit or department of the State of Mississippi, or by any political subdivision thereof, the amount of retainage that may be withheld is governed by Mississippi law.

- 9.3.2.1 Add the following Article 9.3.2.1:

Payment for materials stored at some location other than the Project site may be approved by the Architect and the Owner upon the Contractor's compliance with the following requirements:

- .1 An acceptable Lease Agreement between the Contractor or one of its subcontractors or suppliers and the owner of the land, or building, where the materials are stored covering the specific area where the materials are located.
- .2 Consent of Surety or other acceptable bond to cover the materials stored off-site.
- .3 All Perils Insurance coverage for the full value of the materials stored off-site.
- .4 A Bill of Sale from the Manufacturer to the Contractor for the stored materials.



- .5 A complete list and inventory of materials manufactured, stored and delivered to the storage site and of materials removed from the storage site and delivered to the Project.
- .6 A review by the Architect of the materials stored off-site prior to release of payment.
- .7 Proof of payment of stored materials verified by the supplier must be submitted to the Architect within thirty (30) days of the Application for Payment on which payment for said materials was made. If proof of payment is not submitted within thirty (30) days, then payment for said materials will be deducted from the next application for payment and withheld until proof of payment is received.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1.7 Delete the word "repeated."

9.6 PROGRESS PAYMENTS

9.6.1 Delete Article 9.6.1 in its entirety and insert the following:

Subject to the conditions of the Contract, the Owner shall make payment to the Contractor in the amount certified within thirty (30) days after receipt of Certificate for Payment from the Architect. Payment shall not be considered late until 30 days after Owner's receipt of Certificate for Payment from the Architect, assuming Contractor has complied with all conditions precedent to payment, including but not limited to, the following:

The Owner has no obligation to make payment to the Contractor under the Contract unless the Contractor complies with the following conditions precedent to payment:

- a. The Contractor submits the list of proposed materials, equipment or product and such submittals as required by Section 01600, Part 1.5.A to obtain approval of and payment for such materials, equipment and/or products;
- b. The Contractor submits three (3) copies at the preconstruction conference of the proposed Schedule of Values required by Sections 0800, Article 9.2 and 01025, Part 1.4.A;
- c. The Contractor complies with all requirements of Section 01027, including the requirement to submit two (2) draft copies of the Application for Payment in accordance with Section 01027; and
- d. With each subsequent Application for Payment, the Contractor submits an updated progress schedule and an updated schedule of submittals as required by Sections 01310 or 01311, whichever applies.

A fixed date for submittal of Contractor's Application for Payment will be established at the preconstruction conference. Any Application not filed on or before the date agreed upon between Owner, Contractor and Architect will not be approved or processed until the following month.

9.6.7 Delete the word "Unless" from the first sentence and insert the phrase "Whether or not."

Add the following to the end of Article 9.6.7:

The amount retained by the Contractor from each payment to each Subcontractor and material supplier shall not exceed the percentage retained by the Owner from the Contractor for the Subcontractor's Work.

9.7 FAILURE OF PAYMENT

9.7 In the first sentence, delete the words "or awarded by binding dispute resolution".

9.8 SUBSTANTIAL COMPLETION

9.8.1 Delete Article 9.8.1 in its entirety and insert the following:

Substantial completion for purposes of this Contract and Section 31-5-25, Mississippi Code, occurs only upon Contractor's compliance with the following conditions precedent: (a) the Contractor furnishes to the Architect all close-out documents required by the Contract Documents, including Sections 01700 and 01730, in a form satisfactory to the Architect and the Owner, (b) the Contractor furnishes the manufacturers' certifications and/or warranties required by the Contract Documents, including Section 01650; (c) the Contractor furnishes the Guarantee of Work set forth herein below; (d) the Architect certifies that the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended purpose; and (e) the Contractor executes the Certificate of Substantial Completion which constitutes the Contractor's representation set forth in Section 00800, Article 9.8.5.

The Guarantee of Work shall be submitted as a separate document signed by Contractor and Contractor's Surety and shall state the following:

Contractor and Contractor's Surety hereby guarantee that all Work performed on the Project is free from defective and/or nonconforming materials and workmanship and that for a period of one year from the date of substantial completion or such longer period of time as may be called for in the Contract Documents for such portions of the Work, Contractor or its Surety will repair and/or replace any defective and/or nonconforming materials and workmanship in accordance with the requirements of the Contract Documents.

9.8.2.1 Add the following Article 9.8.2.1:

The Contractor shall be responsible for the costs of inspections made by the Architect, including any and all other related expenses incurred by the Architect which are not otherwise required by Articles 4, 9.8.3 and 9.10.1 of the General Conditions.

The costs of the Architect's additional services shall be deducted by the Owner from the Contractor's Application for Payment submitted after the Owner's receipt of the Architect's statement for such services. These costs are not the result of Contractor's failure to timely complete the Contract within the specified time and, therefore, such costs are in addition to and not a part of the liquidated damages calculation.

9.8.5 Add the following to the end of Article 9.8.5:

Contractor's execution of the Certificate of Substantial Completion constitutes Contractor's representation that the items on the list accompanying the Certificate can and will be completed by Contractor and its subcontractors within thirty (30) days of Contractor's execution of the Certificate. Based upon this representation by Contractor and upon the acknowledgment of the Architect that the listed items remaining can be completed within thirty (30) days, the Owner agrees to execute the Certificate of Substantial Completion. If Contractor fails to complete the items on the list within thirty (30) days of Contractor's execution of the Certificate, then the Owner, at its option and without prejudice to any other rights or remedies it may have under this Contract or otherwise and without notice to Contractor or Surety, may proceed to have same, or any part, completed and to deduct the reasonable costs thereof from the amounts then due or thereafter to become due to Contractor.

9.8.6 Add the following Article 9.8.6:

Upon the Owner's acceptance of the Work as substantially complete and upon Contractor's compliance with all conditions precedent to substantial completion as stated in Section 00800, Article 9.8.1 and upon application by the Contractor, the Owner will pay to the Contractor all retainage held by the Owner less an amount equal to the greater of (a) two percent (2%) of the Contract Sum, or (b) two hundred percent (200%) of the estimated cost of the Work remaining to be performed by the Contractor in accordance with the Architect's determination. Final payment, including all retainage, shall be made at the time and in the manner provided for final payment in accordance with the provisions of Article 9.10 and the additional conditions precedent to final acceptance and payment set forth in Section 00800, Article 9.8.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1.2 Add the following Article 9.9.1.2:

The Owner's occupancy or use of any completed or partially completed portions of the Work shall not affect Contractor's obligation to complete incomplete items on the list attached to the Certificate of Substantial Completion within thirty (30) days or within the time fixed in the Certificate if shorter and does not waive Owner's right to obtain completion of incomplete items at Contractor's expense upon Contractor's failure to timely complete same.

9.11 LIQUIDATED DAMAGES

Add the following Article 9.11:

Time being of the essence of this Contract and a matter of material consideration thereof, a reasonable estimate in advance is established to cover losses incurred by the Owner if the Project is not substantially complete on the date set forth in the Contract Documents. The Contractor and its Surety will be liable for and will pay the Owner the sums hereinafter stipulated as fixed and agreed as liquidated damages for each calendar day for delay until the Work is substantially complete. The Contractor and its Surety acknowledge that the Owner's losses caused by the Contractor's delay are not readily ascertainable and that the amount estimated per day for liquidated damages is reasonable and is not a penalty. The liquidated damages which may be assessed under Article 9.11 are in addition to damages which may be assessed for delays to the Owner prior to substantial completion in accordance with Section 00800, Article 6.1.

The amount established per calendar day for liquidated damages is \$1,000.00.

#### ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

##### 10.1 SAFETY PRECAUTIONS AND PROGRAMS

Add the following to the end of Article 10.1:

The Architect shall not administer the Contractor's performance of its duties and responsibilities under Article 10 (including ~~Articles 10.1 through 10.6~~) because the initiation, maintenance and supervision of safety precautions and programs is the sole responsibility of the Contractor as means, methods, techniques, sequences and procedures of construction and, therefore, is not part of the Contractor's scope of Work which is to be administered by the Architect.

#### ARTICLE 11 - INSURANCE AND BONDS

##### 11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1.5 Delete the words "other than to the Work itself".

11.1.1.9 Add the following Article 11.1.1.9:

Liability insurance will include all major divisions of coverage and be on a comprehensive basis including:

1. Premises - operations (including X-C-U).
2. Independent Contractor's Protective.
3. Products and completed operations.
4. Contractual Liability - including specified provisions for the Contractor's obligations under Sections 00700, Article 3.18 and 00800, Article 3.18.
5. Personal Injury Liability.
6. Owned, non-owned and hired motor vehicles.
7. Broad form coverage for property damage.
8. Owner and Architect will be listed as additional insured on policy.

11.1.2 Delete the first sentence of Article 11.1.2 in its entirety and insert the following:

The insurance required by Article 11.1.1 will be written for not less than the following, or greater amounts if required by law or if deemed necessary by the Contractor to protect its interests:

###### .1 GENERAL LIABILITY:

Commercial General Liability  
(Including XCU)

General Aggregate	\$1,000,000.00	Aggregate
Products & Completed Operations	\$1,000,000.00	Aggregate
Personal & Advertising Injury	\$ 500,000.00	Per Occurrence
Bodily Injury & Property Damage	\$ 500,000.00	Per Occurrence
Fire Damage Liability	\$ 50,000.00	Per Occurrence
Medical Expense	\$ 5,000.00	Per Person

###### .2 OWNER'S & CONTRACTOR'S PROTECTIVE LIABILITY:

Bodily Injury & Property Damage	\$1,000,000.00	Aggregate
Bodily Injury & Property Damage	\$ 500,000.00	Per Occurrence

.3 AUTOMOBILE LIABILITY:

(Owned, non-owned & hired vehicles)

Contractor Insurance Option Number 1:

Bodily Injury & Property Damage \$ 500,000.00 Per Occurrence  
(Combined Single Limit)

Contractor Insurance Option Number 2:

Bodily Injury \$ 250,000.00 Per Occurrence  
Bodily Injury \$ 500,000.00 Per Accident  
Property Damage \$ 100,000.00 Per Occurrence

.4 EXCESS LIABILITY:

(Umbrella on projects over \$500,000)

Bodily Injury & Property Damage \$1,000,000.00 Aggregate  
(Combined Single Limit) \$ Per Occurrence

.5 WORKERS' COMPENSATION:

(As required by Statute)

EMPLOYERS' LIABILITY

Accident \$ 100,000.00 Per Occurrence  
Disease \$ 500,000.00 Policy Limit  
Disease \$ 100,000.00 Per Employee

.6 PROPERTY INSURANCE:

Builder's Risk \$Equal to Value of Work  
Or Installation Floater \$Equal to Value of Work

11.1.3 Add the following after the second sentence:

The Owner and Architect will be named as additional insureds on the Contractor's CGL policy and the Contractor's certificate of insurance must state that the Owner and Architect are additional insureds under the referenced CGL policy and that all of Contractor's contractual liabilities, including but not limited to, its indemnity obligations, are covered by such CGL policy.

Any language contained on the certificate of insurance form or elsewhere to the contrary is deemed stricken.

The certificate of insurance must also state that all of Contractor's contractual liabilities, including but not limited to, its indemnity obligations, are covered. Any terms and conditions contained in the certificate of insurance which are contrary to the Contractor's contractual obligations are hereby stricken from the certificate and do not alter or amend the Contractor's obligation to procure insurance according to the requirements of the Contract.

11.1.5 Add the following Article 11.1.5:

Furnish one copy of the certificate herein required for each copy of the Agreement, specifically setting forth evidence of all coverage required by Article 11. The form of the certificate will be AIA Document G715 or a similar form acceptable to Owner. Furnish to the Owner and Architect, copies of any endorsements that are subsequently issued amending coverage or limits. If the coverages are provided on a claims-made basis, the policy date or retroactive date shall predate the Contract and the termination date of the policy, or the applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment.

11.2 OWNER'S LIABILITY INSURANCE

- 11.2 Delete Article 11.2 in its entirety and insert the following:

The Contractor will pay for and maintain such insurance as will protect the Owner and Architect from their contingent liability to others for damages because of bodily injury, including death, which may arise from operations under this Contract and other liability for damages which the Contractor is required to insure under any provision of this Contract. Certificate of this insurance shall be filed with the Owner and Architect and will be the same limits set forth in Section 00800, Article 11.1.2.

11.3 PROPERTY INSURANCE

- 11.3.1 Delete the phrase "Unless otherwise provided, the Owner" from the first line and insert the phrase "The Contractor".

- 11.3.1.2 Delete Article 11.3.1.2 in its entirety and insert the following:

If the Contractor fails to purchase and maintain such insurance and the Owner is damaged by such failure, then the Contractor shall be liable to the Owner for all such damages incurred by the Owner.

- 11.3.1.3 Delete Article 11.3.1.3 in its entirety and insert the following:

If the property insurance requires minimum deductibles, the Contractor shall pay the deductible and all other costs not covered because of such deductibles. If the Contractor or insurer increases the required minimum deductibles above the amounts so identified or if the Contractor elects to purchase this insurance with voluntary deductible amounts, the Contractor shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles.

- 11.3.2 Delete Article 11.3.2 in its entirety.

- 11.3.3 Delete Article 11.3.3 in its entirety.

- 11.3.4 Delete Article 11.3.4 in its entirety.

- 11.3.5 Delete Article 11.3.5 in its entirety.

- 11.3.6 Delete Article 11.3.6 in its entirety.

- 11.3.10 Delete Article 11.3.10 in its entirety and insert the following:

The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) business days after occurrence of loss.

- 11.3.11 Add the following Article 11.3.11:

11.3.11 In addition to the above, the Contractor shall obtain in the Owner's and Architect's names, and maintain during the same time period, Owner's Protective Liability Insurance and Property Damage Insurance and Public Liability and Property Damage Insurance in the amounts of not less than \$1,000,000 combined single limit, which policies shall cover the operations of the Contractor, and those of his subcontractors to protect the Owner and Architect from loss. This protection is not to be considered as a separate policy by the Contractor, but may be riders to the Contractor's coverage.

ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK

12.2 CORRECTION OF WORK

12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 Add the following to the end of Article 12.2.2.1:

Prior to the end of the one-year period, the Architect may schedule a warranty inspection which shall be attended by the Architect, the Owner, the Contractor and all major subcontractors. During this inspection, the parties shall identify all defective and/or nonconforming items and fix a time within which all defective and/or nonconforming items shall be repaired and/or replaced.

12.2.2.1.1 Add the following Article 12.2.2.1.1:

Within the one-year period provided for in the Guarantee of Work required by Article 9.8.1, if repairs or replacement are requested by Owner in connection with the Work which, in the opinion of the Owner, are rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the Contract Documents, the Contractor and/or its Surety shall promptly, upon receipt of notice from and without expense to the Owner, place in satisfactory condition in every particular, all such Work, correct all defects therein and make good all damages to the building, site, equipment or contents thereof; and make good any work or materials or the equipment and contents of said buildings or site disturbed in fulfilling any such guarantee. If, after notice or within the time agreed upon by the parties at the warranty inspection, the Contractor and/or its Surety fail to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected in accordance with Article 2.4 and the Contractor and its Surety shall be liable for all expenses incurred. All special guarantees applicable to definite parts of the Work stipulated in the Contract Documents shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.2 SUCCESSORS AND ASSIGNS

13.2.2 Delete Article 13.2.2 in its entirety.

13.6 INTEREST

Delete Article 13.6 in its entirety and insert the following:

Payments due and unpaid under the Contract Documents shall bear interest as provided by applicable Mississippi law.

13.7 TIME LIMITS ON CLAIMS

Delete the phrase "in accordance with the requirements of the final dispute resolution method selected within the Agreement" from Article 13.7.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

Delete Article 14.1 in its entirety, including Articles 14.1.1, 14.1.2, 14.1.3 and 14.1.4.

#### 14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1.1 Delete the word "repeatedly" from Article 14.2.1.1.

14.2.1.3 Delete the word "repeatedly" from Article 14.2.1.3.

14.2.1.5 Add the following Article 14.2.1.5 to 14.2.1.7:

.5 fails to achieve Substantial Completion of the Project as described in Article 9.8 within the time stated therein;

.6 fails to complete the list of items attached to the Certificate of Substantial Completion within the time required;

.7 fails to meet any other deadline required by the Contract.

Contractor acknowledges that time is of the essence of this Contract and that all deadlines required by the Contract are critical to timely completion of the Contract. Therefore, Contractor agrees that its failure to meet any deadline constitutes a substantial and material breach of this Contract, entitling the Owner to terminate the Contract.

14.2.2 Delete the phrase "upon certification by the Initial Decision Maker that sufficient cause exists to justify such action."

14.2.4 Delete the phrase "Initial Decision Maker" and insert the word "Architect".

14.2.5 Add the following Article 14.2.5:

If the Owner terminates the Contract for cause, and it is determined for any reason that the Contractor was not actually in default under the Contract at the time of termination, the Contractor shall be entitled to recover from the Owner the same amount as the Contractor would be entitled to receive under a termination for convenience as provided by Article 14.4. The foregoing shall constitute the Contractor's sole and exclusive remedy for termination of the Contract. In no event shall the Contractor be entitled to special, consequential, or exemplary damages, nor shall the Contractor be entitled to anticipated profits resulting from termination of this Contract.

#### 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.3 Delete from the last line of Article 14.4.3 the phrase "along with reasonable overhead and profit on the Work not executed" and add after the end of that sentence: "The Contractor shall not be entitled to receive any payment for either overhead or profit on work not performed."

#### ARTICLE 15 - CLAIMS AND DISPUTES

##### 15.1.2 NOTICE OF CLAIMS

Delete the phrases "and to the Initial Decision Maker" and "if the Architect is not serving as the Initial Decision Maker" from the first sentence.



15.1.3 CONTINUING CONTRACT PERFORMANCE

Delete the phrase "in accordance with the decisions of the Initial Decision Maker" from the last sentence.

15.1.5.1 Delete the second sentence in its entirety and insert the following:

Claims for increases in the Contract Sum for delays are precluded by Section 00800, Article 8.3.

15.1.5.2 Delete Article 15.1.5.2 in its entirety.

15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

Delete Article 15.1.6 in its entirety.

15.2 INITIAL DECISION

Delete Article 15.2 in its entirety, including Articles 15.2.1 to 15.2.8.

15.3 MEDIATION

Delete Article 15.3 in its entirety, including Articles 15.3.1 to 15.3.3.

15.4 ARBITRATION

Delete Article 15.4 in its entirety, including Articles 15.4.1 to 15.4.3 and insert the following:

Wherever "mediation" and/or "arbitration" are referenced in the Contract, the words are deleted and replaced with the word "litigation".

15.4.4 CONSOLIDATION OR JOINDER

Delete Article 15.4.4 in its entirety, including Articles 15.4.4.1 to 15.4.4.3.

END OF SECTION